HOUSE OF ASSEMBLY

Wednesday 9 April 2008

The SPEAKER (Hon. J.J. Snelling) took the chair at 11:00 and read prayers.

LEGAL PROFESSION BILL

The Hon. P.F. CONLON (Elder—Minister for Transport, Minister for Infrastructure, Minister for Energy) (11:02): I move:

That the sitting of the house be continued during the conference with the Legislative Council on the bill.

Motion carried.

PUBLIC WORKS COMMITTEE: FLINDERS MEDICAL CENTRE REDEVELOPMENT

Ms CICCARELLO (Norwood) (11:02): I move:

That the 279th report of the committee, entitled Flinders Medical Centre Redevelopment, be noted.

The Flinders Medical Centre is a tertiary hospital for southern Adelaide and will provide a full range of major complex medical, surgical, diagnostic and support services across the continuum of care for adults. It will also provide a range of surgical and medical services for children and mothers. Built in 1974, the hospital requires redevelopment of critical clinical functions and site engineering infrastructure. The project comprises:

- a new multi-level building to the southern side;
- operating theatre expansion from eight to 12;
- integrated day-of-surgery admission facilities and day surgery unit;
- expanding the emergency department from 31 to 50 treatment cubicles;
- relocating and expanding the emergency extended care unit and the cardiac intensive care unit into refurbished spaces;
- expanding the intensive care unit from 24 to 32 beds and the acute assessment unit from 19 to 36 beds;
- upgrading the central sterile supply department; and
- essential major plant and infrastructure upgrade.

The total capital cost budgeted for the project is $153.68 million on completion, due in September 2011.

The new south wing is envisaged as a multilevel building linked to the south of the existing A, B and C ward wings. It will principally be framed from concrete elements. This is due to the need to marry with the existing floor levels in the adjacent building whilst providing adequate space for the reticulation of the necessary services. It is planned with a slab at level 5 to enable future development of a further two floors. The expansion and redevelopment of the emergency department will occur within the existing building after the emergency extended care unit and the emergency department offices are relocated.

The new south wing at level 3 accommodates women's assessment and birthing suites—a combined labour and delivery and birthing unit. The link to the new wing has been located for direct and discreet access to theatres (for emergency caesarean births and presentations) and to have minimal impact on clinical areas in the neo-natal unit. The new emergency department facility will provide:

- an overall increase in emergency department cubicles;
- adult assessment and treatment facilities;
- a separate paediatric facility;
- mental health facilities;
- two new resuscitation rooms;
- a new isolation room with en suite;

- a dedicated cubicle zoned to coordinate the time-critical and chest pain assessment patients; and
- reorganisation of the five treatment 'streams' to best respond to functional adjacency requirements.

A major initiative incorporated into the project involves construction of a new, purpose-built day procedure unit and day of surgery admission unit for patients requiring day-only or day-of-surgery services. This will be established within the operating theatre suite.

The existing Central Sterile Supply Department at Flinders Medical Centre requires redevelopment and provision of additional equipment in order to meet the demands of the redeveloped Operating Theatre Suite. There will be a major upgrade of the central engineering plant and the systems infrastructure which includes mechanical, electrical, fire, hydraulics and lift infrastructure, and data and communication systems.

The project has significant ESD requirements factored into the brief. A water reduction target of 30 per cent has been established. Energy and greenhouse reduction targets of 13 to 15 per cent have also been established. The design of the new facilities is intended to achieve a five-star rating in the Greenstar rating tool for hospitals.

Extensive consultation has occurred with clinical and non-clinical staff, and the committee is assured that consultation has also occurred with the Bedford Park Residents Association about its concerns regarding transport, traffic issues, and parking in particular. The redevelopment is intended to provide Southern Adelaide Health Service with a facility that will meet the future needs of patients and staff and enable service synergies and enhanced collaboration between functions within the hospital and across the region.

The Flinders Medical Centre redevelopment must align to the vision for health service reform in South Australia, achieve national benchmark standards for service provision and service planning, contribute to optimising financial performance and achieving a balanced budget outcome, and provide a facility which will meet the needs of patients and staff for at least the next 20 years.

A key aim is to provide high quality and efficient health care services which directly align to patient needs by maintaining the existing range of health care services and redesigning them to meet current and future needs of local population. Services will be streamlined to reduce unnecessary delays, overlaps and duplication. The functionality between service areas within the hospital will be improved.

It is hoped that the amalgamation of services will achieve economies of scale without compromising service delivery within a facility that meets environmental objectives. The expanded operational capacity and profile of the hospital will lead to increased recurrent expenditure, and preliminary modelling suggests this will be in the order of $19 million. Part of this increase will be met in the first instance by redirecting funding related to services transferred. Additional operating requirements generated by the expanded operational capacity will be met from within approved funding allocated as part of the 2006-07 budget process.

The option of not redeveloping the hospital would fail to address the required service expansions and changes to functionality. It would also fail to improve access to health services, patient safety and clinical outcomes, or address all currently identified occupational health and safety risks. In contrast, the redevelopment provides a modern, safe and secure facility that enables the effective delivery of services to consumers in the southern region.

This project also improves functionality and enhances work flow and opportunities for better support systems and information sharing. It also avoids the problems of the 'do nothing' option by improving access to health services, optimising patient safety and clinical outcomes, and also responding to occupational health and safety concerns.

The committee closely examined agency witnesses about the impact upon local residents arising from car parking around the hospital. This will be addressed by several factors and future steps. A GP Plus centre at Marion in the next couple of years will reduce the demand on the hospital Emergency Department. About 5 per cent of the work at Flinders will be transferred to the proposed Marjorie Jackson-Nelson Hospital. A new 588-car car park has alleviated the problem triggered by the Flinders Private Hospital. The current car park levels can be added to and further parking analysis will ascertain any changes to the long-term demand. Temporary arrangements allow access to space for 280 cars to park at the Science Park location. Much of the all-day parking in the area is used by Flinders University students, and the council is reviewing the arrangements

with a view to limiting all-day parking. Finally, a traffic consultant has been engaged for the project to study this issue and provide recommendations.

The committee was also concerned to ascertain that the residential component available for the families of country patients was appropriate. We were told that the use of the flats behind the hospital campus has been reviewed, and consideration is being given to removing the student component of users to allow more access for country clients. Based upon the evidence presented to it, and pursuant to section 12C of the Parliamentary Committees Act 1991, the Public Works Committee reports to parliament that it recommends the proposed public work.

Mr PENGILLY (Finniss) (11:10): I clearly support the report that the member for Norwood has just read out in some detail. It is, indeed, pleasing to see that some $150-odd million is being spent at Flinders Medical Centre. However, it is not all beer and skittles. The fact of the matter is that, during the course of the investigation, through the local member (the member for Davenport), we discovered that the Bedford Park Residents Group had not been consulted, and it was only as a result of a push by the Public Works Committee that the committee was able to get representatives from the Flinders Medical Centre to go out and talk to those people and discuss their concerns. So, I think that was something important that we raised.

The issue of the Flinders Medical Centre is certainly dear to the hearts of people in the south, the Fleurieu Peninsula and my electorate. It is a critical hospital for the people down south who need to come to the city for urgent medical attention. There are frequent helicopter transfers to Flinders and, indeed, if someone down south is critically ill, that is the first place to which they are taken. So, I am very much aware of just how important the Flinders Medical Centre is, and I am pleased that the facility will be upgraded in due course.

However, I think it is probably worth noting and putting on the record that this Rann government, to all intents and purposes, has forgotten about the south. It is all very well to do something with the hospital—that was a terrific outcome—but the rest of it can fall apart at the seams and the Rann government could not give a tinker's, in my view; it does not care. It sees other places in the metropolitan area—the north and what-not—as being far more important than those tens of thousands of people who live down south. However, clearly, we will be supporting this measure.

Another concern that I wish to raise is that it seems slowly and inextricably linked that the independence of the Repatriation General Hospital will disappear and the Flinders people will take over and destroy that institution. That is something about which I know the member for Bragg has concerns, which she has raised in many places. That matter will take its course, and I would suggest that we will see the outcome in time to come. A lot is being done at Flinders. However, a lot more probably needs to be done, and we will be following this issue with great interest and great attention. It is very important to the south, and I have great pleasure in supporting the report read by the member for Norwood.

The Hon. R.B. SUCH (Fisher) (11:13): I welcome this rather large upgrade of the Flinders Medical Centre. It is very close to my electorate; it is literally within a few metres. It used to be in the electorate of Fisher. I commend the government for spending this money. One could spend all of the state budget on health and it still would not be enough. We have other priorities as well. However, as someone who spent time in Flinders many years ago (and I do not seek to go back there—and that is no reflection on the hospital, because it is a fantastic hospital), I see this as a very positive move and a welcome upgrade and, as the member for Finniss said, it serves the people in the south, in particular. It has a great reputation.

I hear very few complaints about the hospital. You get the odd one or two, but that is inevitable when you are dealing with tens of thousands of clients each year. I welcome this move. I congratulate the government on committing to this upgrade and the Minister for Health for his input, and I commend the staff who work at Flinders Medical Centre because they are fantastic.

Mr PISONI (Unley) (11:15): Like my colleagues, the member for Finniss and the member for Norwood, I, too, support the expenditure of $153 million on health in the southern suburbs. I point out to the parliament that that was achieved without any land sell off; that is, the capital expenditure of $153 million has been achieved without any land sell off at the Flinders hospital. As a matter of fact, it was the reverse of a land sell off, because the Public Works Committee was told that more land was acquired for car parking across the road. So, we saw an expansion of the landholding of the Flinders Medical Centre for this new development.

It is in complete contrast to what is happening at Glenside, of course, where the very same minister is telling us that we must sell this land to fund the redevelopment of the Glenside Hospital.

I can see a number of inconsistencies in this government. As a matter of fact, when I asked the officers of the department and the hospital who gave evidence to the committee: was any thought given to selling off the land to fund the extension of the emergency ward at Flinders Medical Centre, their response was shock and horror—why on earth would there be? You could see from their faces that they thought it was a ridiculous question, but that is the exact scenario that is happening at Glenside.

The government and the very same minister have told us that that development can only be funded through the sell off of public open space in a part of Adelaide which has very little public open space and which is also being squeezed out by urban consolidation. I know that is also of serious concern to people living in the electorate of the member for Norwood, but I never hear her speak up about urban consolidation in her electorate.

Something else that needs to be noted about this particular project is that this work is being done while the hospital is in use. They are not closing the hospital; they are not building a new hospital to put on this ward: it is being done while the hospital is in use. Again in complete contrast to what the Premier and the health minister are telling us about the new Marjorie Jackson-Nelson Hospital. That must be built at a brand new location because you cannot revamp a hospital; you cannot rebuild a hospital while you are using it. Perhaps the minister needs to see how it is being done at Flinders, because the Public Works Committee saw how it was being done when we held our hearing about this matter.

The facts are that we are seeing a revamp of the Flinders Medical Centre while the Flinders Medical Centre is being used but, for the Royal Adelaide Hospital, we have to throw away 150 years of tradition, a good name that is recognised throughout the world, move shop down the road, and consequently build a brand new hospital, because the same minister who has authorised the refurbishment of the Flinders hospital while in use tells us that we cannot refurbish the Royal Adelaide Hospital while it is in use. Again no consistency.

I was a little surprised to learn that, when I inquired about the emergency backup power and the cogeneration project that came with this revamp and extension of the emergency services, it was diesel powered. There was no direction from the minister or cabinet to look at green sources for this emergency power or the cogeneration. Diesel-powered generators will be used to generate the additional electricity that this project needs outside the grid. I think it was disappointing that there was no interest whatsoever in cabinet at looking at a green alternative. With those closing comments, I support the project.

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (11:20): I rise to applaud the Public Works Committee for completing its charter in relation to the $154 million redevelopment at the Flinders Medical Centre, and I appreciate the work it has undertaken to secure the progress of this project. Page 4 of the report identifies the background to this redevelopment, which was announced during the 2006 election campaign by Premier Rann.

Page 5 of the report outlines some details of the proposal, and I wish to refer to just three: first, the expansion of the theatre operation (that is, the surgical theatres) from eight to 12; secondly, the expansion of the emergency department from 31 to 50 clinical treatment cubicles; and, thirdly, the expansion from 19 to 36 beds in the acute assessment unit. There are corresponding expansions of the intensive care unit, as well as other areas, in addition to the new building on the south side which will accommodate the relocation of a number of wards and services existing in the hospital.

This is a major project; it is quite an exercise to be undertaken. As the member for Unley pointed out, it is a redevelopment on a current hospital site, which is consistent with hospital redevelopments around the country. Melbourne is about to launch the opening of its new children's hospital and a new women's hospital on-site with multistorey buildings within the existing hospitals, which confirms, as does this project, the importance of and the capacity for major hospital rebuilds to occur in situ and not require greenfield developments.

There is another matter to which I particularly draw the attention of the parliament today. Page 4 of the report outlines a number of reforms under South Australia's Health Care Plan 2007-16 which was launched by the government. That report, which refers particularly to reforms in relation to the Flinders Medical Centre, states:

> Some surgical services from the Repatriation General Hospital (RGH) will gradually transfer to FMC [referring to the Flinders Medical Centre], and some high volume/low complexity work will transfer to Noarlunga Hospital. RGH will provide a designated elective orthopaedic surgical service to relieve demand and pressure and improve waiting times for elective surgery.

That is very important, because I do not doubt for one moment that the Public Works Committee would not have had before it the secret Paxton consulting report, which was finally released to the parliament last week—a report which we had been calling on for some two months.

The report, which is dated 25 February 2008 and which was provided to the parliament on 1 April 2008, contains an assessment summary of recommendations in respect of the Repatriation General Hospital. So, whilst we see in the report tabled by the Public Works Committee an expansion of services at the Flinders Medical Centre, members should understand that it is not exclusively for the purposes of providing for increased demand for health services; it is to provide for the fact that services will be cut elsewhere.

The Paxton consultancy report makes it absolutely clear because it contains a number of recommendations, including the closure of what is the equivalent of its emergency department. The Paxton report states:

> ...implement alternative admission processes to manage the existing ARU patients and cease the operations of the ARU...

The report then goes on to identify the cost savings. The ARU is the Acute Referral Unit at the Repatriation General Hospital (otherwise known as its emergency department), which receives an enormous number of referrals from general practitioners and other doctors who send patients to the repat hospital for assessment and often processes which are, of course, not available at a GP clinic.

Also, from time to time it has received the overflow from the Flinders Medical Centre when its emergency department has been under some crisis. This is an important recommendation in a report which was secret until last week and which I guarantee was not before the Public Works Committee. So, when the Public Works Committee was considering the demand and the need for the expansion of medical services, rather than just the generic, it would have been honest of this government if it had allowed the committee access to this document.

The health minister said that document, which cost nearly $1 million of taxpayers' money to prepare, was not available to the Public Works Committee so it could take into account the very important demand. It will be picking up the services as they slash them from the Repatriation General Hospital. There are eight recommendations, most of which involve the slashing of services, reducing access to facilities and, importantly, the removal altogether of the acute facility. It has not had the decency to put this document before the Public Works Committee. Clearly, the slashing of services in other hospitals will increase the demand under the government's plan, and that is why it is necessary to expand the services in Flinders Medical Centre, which is a major tertiary hospital.

When this issue is being reconsidered I would ask, when the Public Works Committee is being asked to consider public works, viability, demand, and all the things which are within its charter and on which the parliament requires it to make an assessment in relation to these projects, that the government comes clean with reports on other services which will be removed or significantly undermined, so the Public Works Committee has all the material before it. It may even recommend a further advance on the projects that it is considering. Nevertheless, I acknowledge the Public Works Committee's consideration of this matter and support the motion that the committee's report be noted.

Ms CICCARELLO (Norwood) (11:26): I thank members for their support for the redevelopment of Flinders Medical Centre. I point out that the Public Works Committee considered this project in November last year, and it is because of the way in which this parliament operates that we are debating it now. The Flinders Medical Centre will bring a lot of benefits to the people in the south. This matter was considered so important that, instead of taking 10 years to redevelop the Flinders Medical Centre, it has been brought forward so that it happens within four years. I say to the member for Finniss that my heart bleeds when I see the money that is spent in the southern part of Adelaide; I only wish I could have some of it to spend on the eastern part of Adelaide. I commend the report to the house.

Members interjecting:

The SPEAKER: Order!

Motion carried.

GLENSIDE HOSPITAL REDEVELOPMENT

Private Members Business, Committees and Subordinate Legislation, No. 2: Ms Chapman to move:

That this house establish a select committee to inquire and report on the state government's proposed sale and redevelopment of the Glenside Hospital site, and in particular—

(a) the effect of the delivery of services by the proposed collocation of mental health, drug and alcohol, rural, regional and state-wide services, and the possible security implications;

(b) the effect of the proposed sale of 42 per cent of the site and its impact on the amenity and enjoyment of open space for patients and the public, biodiversity, conservation and significant trees;

(c) the impact of a reduction of available land for more supported accommodation;

(d) the effect of the proposed sale of precincts 3, 4 and 5 (as identified in the state government's concept master plan) for the site and its possible effect on access to the site and traffic management generally;

(e) the proposed sale of precinct 4 by private sale to a preferred purchaser; and

(f) any other relevant matter.

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (11:27): I seek leave to withdraw this motion. I am pleased to report that a motion of similar wording was passed recently in the Legislative Council and it will not be necessary for me to proceed with the motion. A select committee is on its way to being established.

Leave granted; motion withdrawn.

PUBLIC WORKS COMMITTEE: LITTLE PARA DAM SAFETY UPGRADE

Ms CICCARELLO (Norwood) (11:28): I move:

That the 285th report of the committee, on Little Para Dam Safety Upgrade, be noted.

The Little Para Dam was completed in 1979 and consists of a concrete-faced rockfill embankment 53 metres high and 255 metres long. It has a capacity of 20,800 megalitres and supplies water to the Little Para water filtration plant, which serves Salisbury, Elizabeth, Parafield, Para Hills and Mawson Lakes.

Dams are carefully designed at the time they are constructed and it is hoped that failure of a dam is unlikely. However, because they age and are subject to changing natural forces, they eventually require remedial action in order to ensure that they do not fail and cause loss of life and significant damage to the communities and the environment in the flood plain below the dam.

The most significant risk to the dam is washing away the crest following a large storm. The current spillway has a capacity to bypass a one in 10,000 year storm. However, because a failure can inundate a flood plain containing 35,000 people, dam safety guidelines recommend that the spillway be upgraded to mitigate the probable maximum flood to one in 10 million years without failure. This project involves:

- Construction of an additional 52-metre wide spillway to prevent overtopping and failure of the dam during extreme floods;
- Raising the dam crest by one metre to increase freeboard and improve spillway capacity;
- Modification of the existing spillway to accommodate deeper flows;
- Checking the hold-down anchors of the outlet tower to ensure stability during earthquake; and
- Replacement of vegetation removed during construction and increasing planting area to ensure the project is carbon neutral.

Proprietary fail-safe tipping gates at the head of the new spillway will maximise storage during normal floods and minimise the frequency of the flooding of downstream properties. The use of this innovative technology will reduce excavation by 220,000 cubic metres and generate savings of approximately $1.8 million. This work will reduce the risk posed by the dam and ensure that it complies with current guidelines.

Because large earthquakes are rare in South Australia, catastrophic failure of the Little Para Reservoir is not likely as a result of an earthquake. However, if the intake tower collapses, the

contents of the storage will be lost in an uncontrolled manner. The tower is currently stabilised by anchors into the rocks below, and these may have deteriorated over time. During this project, the tops of these anchors will be exposed, and they will be physically tested for structural adequacy. If any remediation is required, it will be undertaken under a separate contract. This safety upgrade will:

- reduce the risk of failure of the reservoir embankment during flood,
- increase the security of the water supply system serviced by the Little Para Reservoir; and
- increase the safety of the population living below the dam.

The portfolio risk assessment for Little Para indicates that a flood failure of Little Para could flood a population of 35,000 people and cause $2.6 billion to $2.8 billion in damage. Therefore, the dam has been placed in the extreme risk category because of the potential to cause loss of life, economic loss and loss of water supply to a large area.

Twenty options were costed, with the potential least cost options being for a tapered side channel spillway or a narrow unlined fuse-gate spillway. The fuse-gate spillway contains a proprietary gate component that has a much smaller environmental footprint than the tapered channel. This option is being pursued and a fixed price is being obtained for design and construction to reduce project risk.

A total of 270,000 cubic metres of rock will be excavated (instead of 494,000 cubic metres for the next cheapest option), and the overburden will be landscaped on site, as it is contaminated with a noxious weed. The rock fill will be used for roadworks on site, with the bulk of the high quality rock shipped off site for other construction projects. The major project risks include:

- dust, noise and traffic nuisance during construction;
- impact on endangered plant and animal species;
- damage due to design errors;
- rock excavated from the spillway being unsuitable for construction purposes;
- spreading of noxious weeds; and
- failure to meet peak demand during construction due to low dam water levels.

Strategies have been developed for all risks, and they will be reviewed regularly during the project. These strategies include: independent third-party assessment; an environmental management plan; a traffic management plan; core drilling prior to design completion, keeping dam levels close to the maximum allowed; and the use of a raised access road and coffer dam during construction. Construction of the project is expected to be completed by June 2009 at an estimated cost of $15 million, with only a negligible change in the operating cost of the reservoir.

Based upon the evidence presented to it, and pursuant to section 12C of the Parliamentary Committees Act 1991, the Public Works Committee reports to parliament that it recommends the proposed public work.

Mr PISONI (Unley) (11:33): The opposition obviously supports the project; however, it is a very small project in the overall provision of water infrastructure for South Australia. We are seeing the difficulties South Australia is experiencing at the moment whilst it struggles with its water infrastructure. Certainly, I know that in my electorate houses are cracking, and an article in *The Advertiser* the other day highlighted that not only Unley but also areas such as Parkside and Goodwood are very severely affected by cracking due to the drying out of the clay soil.

We have seen a number of pipes burst, and in Unley a week rarely goes by when we do not see a small leak popping up from the bitumen somewhere in the electorate. Of course, this leads to significant cost and inconvenience for it to be fixed in a hurry.

Having said that, sometimes I have witnessed leaks lasting for up to two weeks before they are attended to and, of course, being the diligent local member that I am, I am on the phone every day whenever I see a leak to get it fixed and save that water. But we get the same story that this is happening all over the place and we can do only so much in a day.

So, it is important that we maintain and continue to grow our water infrastructure, and methods of catching water and providing water to residents here in South Australia, particularly with the Premier's plan to increase our population in South Australia, which he has now brought

forward from 2050, I believe, to now 2032, to two million people. It is imperative that in order to do that successfully we must have adequate water infrastructure, particularly in our cities.

I know how frustrated some of my country members are about the way water is being managed for rural producers in South Australia, and yet we are seeing no restrictions on trade in the commercial or manufacturing sector. I am sure that the member for Hammond will have something to say about that a little bit later. I know he is a strong advocate of water resources in South Australia. I am happy to tell this chamber that not a single party meeting goes by when the member for Hammond is not thumping his fist on the table and expressing his frustration with the way water is managed in this state.

So, obviously we are very keen to see that our water assets are maintained—some would argue at a very slow pace, a very slow rate. I stand here as a supporter of this project, and obviously there are wider benefits for the local community in improving their safety and removing the risk that they have in the longer term by dealing with this maintenance program now and not waiting until later on.

The Hon. P.L. WHITE (Taylor) (11:37): I rise to support this project, as a member of the Public Works Committee who heard the evidence. It is very well considered expenditure of some $50 million to upgrade the safety of the Little Para reservoir, which not only services the Little Para water filtration plant and those northern suburbs of Salisbury, Elizabeth, Parafield, and all around there but of course if the dam was to fail there would be catastrophic problems. It is a dam that has a capacity of nearly 21,000 megalitres, so all of that water would flow not only into the electorate of my colleague the member for Little Para but also into mine. We have had enough flooding incidents in that region, I can assure you, in recent times.

I am very keen that this work proceeds. The work is due to be completed mid next year. It is an upgrade. It is a 30 year old dam that is due to have this upgrade because, while the current spillway, for example, has a bypass capacity for a one in 10,000 years storm, we do have the possibility of failure that would inundate all of those surrounding and lower lying regions of quite dense population. So, the safety upgrade will reduce that failure during a flood event, increase the security of that water heading into the Little Para reservoir and, of course, people in surrounding suburbia will be able to sleep safer at night. It is a big job—nearly 300,000 cubic metres of rock will have to be excavated at quite some expense—but it is a work that is due at this point in time, and I support it very strongly for the added security that it will give to our water supply and to surrounding suburbs.

Mr PENGILLY (Finniss) (11:40): I also rise to support this project; I think it is a good project. As the member for Taylor has indicated, it is in the best interests of that most modern dam that the state has built in Little Para. I think it was the last one that was built, and it is the most modern dam in the system, so I think it is appropriate that this action now take place.

The good news is that, given that this is being put in place as a safety precaution, the members for Ramsay and Napier can sleep soundly at night in their respective suburbs of Norwood and Springfield and not worry about their constituents getting washed away. I think it is good news for them. A good part of it is the revegetation aspect and the fact that the landscaping and everything around that dam will also be improved quite substantially.

The floods that we get from time to time are of enormous concern and, as we go on developing the Adelaide Plains and that very flat section of land that is to the north of Adelaide, we have to have in place sufficient security measures to make sure that when we get a flood—and we will; we will get a big rain, don't worry—everything is safe and sound below and nothing disastrous happens.

My view is that the floods will come sooner rather than later. I hope that this project goes ahead quite rapidly because after the sustained period of drought that we have had you generally get a particularly wet period. Whether that happens this year, next year or the year after, none of us knows, but it will happen and we have to be prepared. Yes, I am pleased and I was pleased as a member of the Public Works Committee to support this project.

The Hon. R.B. SUCH (Fisher) (11:42): I will be very brief. I support this upgrade to the Little Para dam. Having the reservoir in my electorate upgraded some time ago, I know that this is an essential project. This is the result of a study done some years ago (which originated in the US) which found that some of the dams there were not safe and they collapsed with tragic consequences. So, standards in Australia have been raised, and so they should be. It is not that

Little Para is likely to fail, neither was that the case with Happy Valley, but it is better to be safe rather than sorry and have lives lost and people's property damaged.

I note that the report talks about minor works planned for Kangaroo Creek. I would hope that major works are planned for Kangaroo Creek because originally the height of the spillway there was to be raised much higher than it ended up being. It was compromised in the sense that it became a flood control issue as well. I think that Kangaroo Creek's major spillway should be raised substantially. It would retain a lot of water and a stormwater spillway could be built just below the main spillway. I commend this report. It is a good safety measure and I commend SA Water for continuing to upgrade their reservoirs. I note that many others are still to be done as part of a $145 million project.

Mr PEDERICK (Hammond) (11:44): I, too, rise today to support the motion to note the report on the upgrade of the Little Para reservoir. I note that it is one of a string of reservoirs that supplies Adelaide's water and is also backed up by pipelines from the River Murray. This one takes supply from the Mannum pipeline when there is a lack of inflows, not just for the Little Para but also other dams in the hills. The government's policy initially was to expand Mount Bold. That was to expand—

Mr Pengilly interjecting:

Mr PEDERICK: Yes, a backflip. The government was going to expand Mount Bold by 200 gigalitres (from 45 to 245 gigalitres), yet, suddenly, it has gone to somewhere in the Mount Lofty Ranges.

The Liberal Party is against the construction of Mount Bold and, if the government does go down this path of increasing storage in the Mount Lofty Ranges, we will need to have a very good look at whatever site is decided upon for a new reservoir or an expanded reservoir. I do not know what the government has done regarding inflow measurement and that sort of thing. However, the Minister for Water Security told a group of people at Goolwa on Sunday that 139 sites are now being considered for a proposed dam.

Mr Pengilly: She made a big stuff-up, didn't she?

Mr PEDERICK: Yes; just a minor issue there! Any proposal for a dam, a new reservoir or an expanded reservoir in the Hills should be avoided. Plenty of rain falls on the City of Adelaide area which could be captured. The technology is there, as has been proven by Colin Pitman in the Salisbury council, with the wetland project supplying about nine gigalitres of water to industry in the north. I know that Michell's wool-handling facility in the north contracted for a lot of this water to save them from purchasing water from the normal SA Water stream.

One problem the government has in the Hills is that there is a threatened loss of species, which goes against the State Strategic Plan in terms of both flora and fauna at Mount Bold . That is why the government is doing a back-pedal. We saw an interesting situation, where the government came kicking and screaming into the picture with a desalination plan—which we came up with.

Ms CICCARELLO: On a point of order, Mr Speaker.

The SPEAKER: The member for Norwood.

Ms CICCARELLO: I ask the speaker to come back to the substance of the debate, which is the Little Para reservoir, and not to continue with a general discussion about what is happening elsewhere.

Mr PEDERICK: No worries.

The SPEAKER: Order!

An honourable member: What is the point of order?

The SPEAKER: Order! I must admit I have not been following the debate very closely, but I do remind members to speak to the debate.

Mr PEDERICK: Thank you, Mr Speaker. I am discussing desalination because I believe that part of the program is for desalinated water to be piped back into reservoirs and, as reservoirs are the topic, I have reverted to that. Little Para may be one of those reservoirs. I am not privy to the documents and the research that the government has been doing. However, I am aware that part of the study on desalination involves storing the desalinated water in the dams. While I am on the topic of desalinated water which will be pumped into reservoirs, I wonder what will be done with the cleaned-up water from the pilot plant. That is something we will learn about down the track:

whether they will be pumping that straight back into the sea and not using something that has been cleaned up.

In conclusion, I certainly support the remediation works planned for the Little Para dam. I note, with interest, that the anchors on the intake tower will be monitored. If any work is needed to be done on those intake towers, I hope that it is done appropriately. I commend the motion.

Ms CICCARELLO (Norwood) (11:49): I commend the report to the house.

Motion carried.

PUBLIC WORKS COMMITTEE: ELIZABETH PARK NEIGHBOURHOOD RENEWAL PROJECT

Ms CICCARELLO (Norwood) (11:49): I move:

That the 286th report of the committee, on the Elizabeth Park Neighbourhood Renewal Project, be noted.

The Elizabeth Park Neighbourhood Renewal Project comprises an area within Yorktown, Midway and Shillabeer roads and contains 237 allotments and dwellings owned by the South Australian Housing Trust. This represents 44 per cent of the 508 allotments and dwellings within the project area.

The area is essentially residential but contains other facilities, including the Elizabeth Park Junior and Primary Schools and a neighbourhood level shopping centre. Immediately to the south is a private primary school and public open space in the form of Olive Grove Reserve containing Adam Creek.

The master plan for Elizabeth Park has a four to five-year program. During this time, the Housing Trust will demolish up to 130 dwellings, retain 50 dwellings and upgrade and sell 48 others. The trust has purchased 14 strategically significant sites to create larger redevelopment sites, and plans to subdivide and sell 111 Torrens title allotments. A further 40 Torrens title allotments will be retained for new trust housing. When the program is complete, the Housing Trust will retain at least 22 per cent of total stock, being 130 of 585.

The total capital expenditure of the project is $18,345,581, including GST. An amount of $1.680 million is funded out of the Urban Renewal Accelerated Fund to purchase properties included in the project. The total project revenue is $16,672,625 (including GST) from the sale of land and dwellings. The cash generated from the sale of Housing Trust owned land will fund the construction of 80 high needs replacement housing within the project area.

It is intended to utilise funds within the Elizabeth Development Account for most of the public area improvements. This account was established in 1996 for payment by the City of Playford of $1.5 million over 10 years to land owned by the Housing Trust at the Elizabeth Centre. The funds are to go towards various infrastructure and capital works to be agreed with the trust to improve the amenity of the area in which the Housing Trust dwellings are located.

The agreement specifies that the works to be paid for from moneys from the account shall be over and above the works that would normally be performed by the council in a particular area. The indicative budget of at least $800,000 will provide improvements to public spaces, including reserves, signage, lighting, entry points and traffic calming. Funds should also be available for community development initiatives to be identified after community consultation.

The City of Playford has agreed in principle that the cost of undertaking improvements, such as the safety and amenity of public areas, streetscape and traffic management, will be funded from the Elizabeth Development Fund. The remaining elements, such as street tree planting and footpath upgrading, together with community projects, are to be funded, where appropriate, from its annual capital programs in coordination with the project.

This project will improve the quality and diversity of housing and the urban environment and achieve urban consolidation through improved utilisation of land resources. It will also achieve a better balance of public and private housing and enhance community spirit. The neighbourhood renewal program will promote home ownership to tenants and private owners/occupiers whilst also aligning housing opportunities with the Housing SA customer profile. Other effects of the project will be to: promote energy-efficient design and construction; increase capital values of dwellings retained by the Housing Trust or developed by Housing SA; enhance streetscapes and public spaces; reduce maintenance costs; and create a safe and more sustainable community.

All the dwellings have been audited to determine condition and a maintenance schedule, and it is evident that most of the double units constructed in the 1960s have reached the end of

their economic life. The project commits to initiatives that minimise energy consumption through the use of mandated solar hot water services, passive design principles such as orientation of buildings, maximum use of natural lighting where practicable and development of urban design guidelines. Contractors are required to recycle 90 per cent of construction waste, excluding asbestos contaminated materials.

The project is anticipated to be completed over approximately four years, but this is dependent upon the rate at which allotments are able to be sold. The first house and allotment sales are anticipated to occur in June 2008.

Based upon the evidence considered, and pursuant to section 12C of the Parliamentary Committees Act 1991, the Public Works Committee recommends the proposed public works.

Mr PENGILLY (Finniss) (11:55): Once again, I have pleasure in supporting this motion of the member for Norwood. It was an interesting project to follow through on and, of course, the issue is really the public value of the proposed project. I believe that it does have quite a bit of public value. I think that it is in the best interests of the people of that area that this renewal project go ahead. It will create a more sustainable community which better reflects the residents' needs in that area.

Indeed, it will probably need something of a lift out there to change the way things are, and I think that this is a good start. It will benefit members of the Elizabeth Park community through the improved utilisation of its land resources. It will allow more affordable housing opportunities. It will enhance the streetscapes and public areas, and it will reduce the traffic congestion, which is an important part of it. I think that we can do a lot more of that.

A concern that I raise is that we are doing this up there, but the government, in its wisdom, has decided to expand the urban growth boundaries down in the south, and clearly the Onkaparinga council is desperately unhappy about what is being proposed down there and what is being pushed onto the Onkaparinga council. If you balance up the two projects, I think that the government wants to be a bit broader in the way it thinks through these things.

Much of the current housing stock in the proposed project area was built in the 1960s during that great influx of migration principally from Europe and the United Kingdom. The residents will benefit greatly from the construction of new dwellings designed specifically to meet their needs. If you think back to what was built in the 1960s, construction methods in this next century are quite different to those of the 1960s and they look fairly severely outdated and, indeed, they do not look anything like modern construction methods.

Having said that, I would point out that, in the 1960s when they built, they did have wider verandas, and they did not stick airconditioners in everywhere as we do now. They also put rainwater tanks and similar in place to satisfy the needs of the residents, and I think that is something that we are not really smart about now. I think that modern construction methods leave a lot to be desired. We just consume more and more energy by putting airconditioners in places, and we do not conserve water. I think that is something that, ultimately, we need to rethink, and perhaps the Elizabeth Park area is a good place to recommence that thought process.

The project will provide positive indirect benefits to the wider community through increased employment, particularly during the construction phase and through a strategy developed to minimise environmental impact, and we need to make sure that—

An honourable member interjecting:

Mr PENGILLY: I have the floor.

An honourable member interjecting:

Mr PENGILLY: I seek leave to continue my remarks later.

The SPEAKER: My advice is that you cannot seek leave to continue your remarks on private members' business.

Motion carried.

SELECT COMMITTEE ON BALANCING WORK AND LIFE RESPONSIBILITIES

Ms PORTOLESI (Hartley) (11:58): I bring up the final report of the committee, together with minutes of proceedings and evidence.

NATIONAL GAS (SOUTH AUSTRALIA) BILL

The Hon. P.F. CONLON (Elder—Minister for Transport, Minister for Infrastructure, Minister for Energy) (12:01): Obtained leave and introduced a bill for an act to establish a framework to enable third parties to gain access to certain natural gas pipeline services; to repeal the Gas Pipelines Access (South Australia) Act 1997; to amend the Australian Energy Market Commission Establishment Act 2004; and for other purposes. Read a first time.

The Hon. P.F. CONLON (Elder—Minister for Transport, Minister for Infrastructure, Minister for Energy) (12:01): I move:

That this bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

The Government is again delivering on a key energy commitment through new legislation to improve the governance arrangements for the regulation of natural gas pipeline services, for the benefit of South Australians and all Australians.

The National Gas (South Australia) Bill 2008 will make important governance reforms to gas regulation, through separating high level policy direction, economic regulation, rule making, and rule enforcement. The Bill brings gas access regulation under the jurisdiction of the Australian Energy Market Commission as rule maker and the Australian Energy Regulator as the economic regulator and enforcement body. These reforms are modelled on the changes made to electricity regulation in the 2005 and 2007 amendments to the National Electricity Law and are designed to ensure consistency between gas and electricity regulation where appropriate.

The Bill contains new incentives to encourage investment in gas infrastructure, which are particularly important in light of the important role gas is expected to play as we move to a carbon constrained economy. These incentives include the continuation of the greenfields pipeline incentives, a new light handed regulatory regime and improvements to the rules around cost recovery for investment in expanding existing gas infrastructure capacity.

A further major reform is the streamlined rule change process, now embodied in the new National Gas Law. As a result of these reforms, the rules that govern the regulation of pipeline services, and which are currently embodied in the National Gas Code, will be replaced with rules made under the National Gas Law.

This Bill also makes significant advances in transparency in the market for gas by establishing a Bulletin Board to provide information about natural gas services and assist in the response to gas emergencies.

In short, this Bill will strengthen and improve the quality, timeliness and national character of the governance and economic regulation of pipeline services while increasing consistency between electricity and gas regulation and improving transparency.

Background

As Honourable Members will be aware, South Australia is the lead legislator for national gas legislation and retains this important role under the reforms proposed.

The existing co operative scheme for the regulation of pipeline services came into operation in 1997. The lead legislation is the Gas Pipelines Access (South Australia) Act 1997. There are two Schedules to this Act, the first titled Third party access to natural gas pipelines, and the second being the National Third Party Access Code for Natural Gas Pipeline Systems (the Gas Code). Together these Schedules are referred to as the Gas Pipelines Access Law and, along with the Regulations made under them, are applied by all Australian States and Territories as well as the Commonwealth. The Gas Code is able to be amended by a Ministerial approval process.

Under the proposed reforms, the new National Gas Law, the Regulations made under the National Gas (South Australia) Act 2008 and, now, the National Gas Rules, will be applied in all Australian jurisdictions by application Acts which apply our Law, Regulations and Rules.

As Honourable Members will be aware, in December 2003, the Ministerial Council on Energy responded to the Council of Australian Governments' report 'Towards a Truly National and Efficient Energy Market', also known as the Parer Review by announcing a comprehensive and sweeping set of policy decisions for its major energy market reform program. These policy decisions were publicly released as the Ministerial Council's Report to the Council of Australian Governments on 'Reform of Energy Markets'. All first Ministers endorsed the Ministerial Council's Report.

The 2004 Australian Energy Market Agreement, as amended in 2006 commits the Commonwealth, State and Territory Governments to establish and maintain the new national energy market framework. An important objective of the Australian Energy Market Agreement is the promotion of the long term interests of energy consumers, which has been enshrined as the key objective of the Law, in the new National Gas Objective in the National Gas Law.

Also in 2004, the Productivity Commission completed its 'Review of the Gas Access Regime'. This Bill implements the policy responses of the Ministerial Council on Energy to that Review and incorporates a number of resulting regulatory reforms.

Parallel to the process of replacing the Gas Code with the National Gas Law, the Ministerial Council on Energy has been pursuing other mechanisms to develop the gas market. In November 2005 the Ministerial Council

on Energy announced the establishment of the Gas Market Leaders Group, an industry run group, to develop proposals to improve transparency and trading in Australia's gas markets. The Gas Market Leaders Group reported to the Ministerial Council in June 2006, and in October 2006 the Ministerial Council endorsed the proposals for development of a gas market Bulletin Board and design work for a Gas Short Term Trading Market. This Bill contains provisions to allow the Bulletin Board to become operational.

New regulatory arrangements

This Bill reforms the governance arrangements for the regulation of pipeline services by conferring functions and powers on two national energy bodies, the Australian Energy Market Commission, which was established under the South Australian Energy Market Commission Establishment Act 2004, and the Australian Energy Regulator, established under the Commonwealth Trade Practices Act 1974. These bodies were originally given functions and powers as the regulator and rule maker under the National Electricity Law, and will now have similar functions conferred on them under the National Gas Law. Importantly, the Bill also enshrines the policy making role of the Ministerial Council on Energy in the context of gas regulation.

The Australian Energy Regulator will be responsible for gas transmission and distribution regulation in all jurisdictions other than Western Australia, where the Economic Regulation Authority retains this role. The Australian Energy Market Commission will be responsible for rule making for gas transmission and distribution in all jurisdictions.

As a result of these new regulatory arrangements, the Code Registrar and the National Gas Pipelines Advisory Committee are to be abolished and their functions assumed by the Australian Energy Market Commission.

Consultation

All of these reforms have been the result of extensive public consultation processes with industry participants and other stakeholders. These have included the development, publication and MCE responses to the 2002 Parer Review and the 2004 Productivity Commission Review of the Gas Access Regime. Further consultation was then undertaken on the implementation of the recommendations contained in the Expert Panel in its 'Report on Energy Access Pricing' of 2006.

Consultation on this Bill itself included opportunities to provide written submissions on two exposure drafts of the Bill and the National Gas Rules. In total, 45 written submissions on the drafts of this Bill and the rules were received. I take this opportunity to thank all parties who made submissions for their valuable contribution to these important reforms. As you have heard, however, many of the constituent parts of the overall reform program, including important elements of this Bill, have also been subject to previous consultation processes.

The Bulletin Board provisions of the Law and the Rules have been extensively consulted on by the Gas Market Leaders Group, including an initial consultation paper in June 2007, a final paper outlining business data and requirements for the Bulletin Board in September 2007 and consultation on exposure drafts of the Bulletin Board Law and Rules provisions in February of this year.

National gas objective

This Bill incorporates a new national gas objective which mirrors the National Electricity Objective in the National Electricity Law.

The alignment between the objectives of the gas and electricity regime is an important foundation for the regime. A single consistent objective across gas and electricity will increase the prospect that the regimes remain closely aligned over the long term, even in light of the capacity in both regimes for interested parties to make applications to change rules through the Australian Energy Market Commission.

The national gas objective is to promote efficient investment in, and efficient use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, reliability and security of supply of natural gas.

The national gas objective is an economic concept and should be interpreted as such.

The long term interest of consumers of gas requires the economic welfare of consumers, over the long term, to be maximised. If gas markets and access to pipeline services are efficient in an economic sense, the long term economic interests of consumers in respect of price, quality, reliability, safety and security of natural gas services will be maximised. By the promotion of an economic efficiency objective in access to pipeline services, competition will be promoted in upstream and downstream markets.

Just as the Australian Energy Market Commission must test changes against the objective of the law when making rules, the Australian Energy Regulator must perform its functions in a manner that will or is likely to contribute to achieving the objective of the law.

The purpose of the National Gas Law is to establish a framework to ensure the efficient operation of pipeline services, efficient investment, and the effective regulation of gas networks.

Revenue and pricing principles

A key feature of the amended National Gas Law is the inclusion of six principles that guide the development of the framework for the regulation of pipeline services. These revenue and pricing principles will guide the Australian Energy Market Commission in making the rules governing the regulation of pipeline services and the Australian Energy Regulator when approving access arrangements.

These principles are fundamental to ensuring that the Ministerial Council on Energy's intention of enhancing the efficient delivery of natural gas services is achieved. To provide certainty to the industry and

consumers, these principles will be applied through the National Gas Law. The aim of the pricing principles is to provide the necessary balance between allowing the regulatory regime to evolve as the industry evolves through the National Gas Rules and provide the framework for efficient investment in pipelines. These revenue and pricing principles replicate the principles in the National Electricity Law to ensure a consistent framework for energy access pricing.

The first of these principles requires that a regulated service provider should be provided with a reasonable opportunity to recover at least the efficient costs the operator incurs in providing services, complying with a regulatory obligation or requirement or making a regulatory payment. At least efficient cost recovery is vital if service providers are to maintain their gas networks in order to meet community expectations of the service levels they receive, and to undertake further investment to serve Australia's growing population.

The second principle requires that service providers should be provided with effective incentives in order to promote the economically efficient investment in and provision and use of pipeline services.

The third principle requires that regulators have regard to the capital base adopted in any previous determination conducted by the Australian Competition and Consumer Commission or jurisdictional regulators, or as specified in the rules. This principle is important to ensure that the regulatory framework recognises the long lived nature of pipelines by recognising how sunk assets have been considered previously in rules or previous access arrangements.

The fourth principle ensures that risks are appropriately compensated by requiring that prices and charges for the provision of reference services allow for a return commensurate with the regulatory and commercial risks involved in providing the services to which that price or charge relates.

The fifth principle explicitly requires the Australian Energy Regulator to have regard to the economic costs and risks of the potential for under and over investment by a regulated service provider in its network. The cost of under investment is lower service standards for consumers and ultimately higher costs to correct these, while the cost of over investment is unnecessarily high prices to consumers. This principle will ensure that Australian consumers receive the level of service that they expect and at the right price.

The final principle requires that regard be had to the economic costs and risks of the potential for under and over utilisation of a service provider's network. This principle guides decision makers to consider the efficiency of the usage of existing assets and balance this against the principle of over and under investment. Utilisation is another important indicator of whether the network is operating efficiently. Under utilisation during a previous access arrangement period might indicate that prices have been set too high. It may also be an indicator of over investment, which can also result in high prices. Either way it can have adverse consequences on consumers. Conversely, over utilisation is an indicator of under investment which can result in poor service standards.

Ministerial Council on Energy role and functions

Consistent with the Australian Energy Market Agreement the new National Gas Law and Rules have been drafted to reflect the Ministerial Council on Energy's function to give high level policy direction to the Australian Energy Market Commission in relation to the national energy market, rather than engaged directly in the day to day operation of the energy market or the conduct of regulators. The Ministerial Council's powers under the National Gas Law mirror its role under the National Electricity Law.

The means by which the Ministerial Council on Energy will perform this role under the new National Gas Law and Rules is, first, through its ability to direct the Australian Energy Market Commission to carry out a review and report to the Ministerial Council on Energy. Such a review may result in the Australian Energy Market Commission making recommendations to the Ministerial Council on Energy in relation to any relevant changes to the Rules that it considers are required. Secondly, the Ministerial Council on Energy may initiate a Rule change proposal including in response to a review or advice carried out or provided by the Australian Energy Market Commission as a result of a request by the Ministerial Council on Energy. Thirdly, the Ministerial Council on Energy may publish statements of policy principles in relation to the Australian Energy Market Commission's rule making and review functions under the new National Gas Law, or the Rules.

Ministerial Council on Energy statements of policy principles must be consistent with the National Gas Objective. The Ministerial Council will be required to give a copy of such statements to the Australian Energy Market Commission which must then publish the statement in the South Australian Government Gazette and on the Australian Energy Market Commission's website.

Australian Energy Market Commission role and functions

The Australian Energy Market Commission has been established as a statutory commission. Under the new National Gas Law and Rules, the Australian Energy Market Commission is responsible for Rule making and market development. Market development will occur as a result of the Rule review function.

In so far as its Rule making function is concerned, the Australian Energy Market Commission itself will generally not be empowered to initiate any change to the Rules other than where the proposed change seeks to correct a minor error or is non material. Instead, its role is to manage the Rule change process and to consult and decide on Rule changes that are proposed by others, including the Ministerial Council on Energy, gas market operators, industry participants and gas users.

In so far as its market development function is concerned, the Australian Energy Market Commission must conduct such reviews into any matter related to the national gas market or the Rules as directed by the Ministerial Council on Energy. The Australian Energy Market Commission may also, of its own volition, conduct reviews into the operation and effectiveness of the Rules or any matter relating to them. These reviews may result in the Australian

Energy Market Commission recommending changes to the Rules, in which case the Ministerial Council on Energy, or any other person, can then decide to initiate a Rule change proposal based on these recommendations through the Rule change process.

In performing its functions under the new National Gas Law and Rules, the Australian Energy Market Commission will be required to have regard to the National Gas Objective. Further, the Australian Energy Market Commission must have regard to any relevant Ministerial Council on Energy statements of policy principles in making a Rule change or conducting a review into any matter relating to the Rules.

Australian Energy Regulator role and functions

The Australian Energy Regulator has been established as a Commonwealth statutory body under the Trade Practices Act1974. The Australian Energy Regulator is the primary regulator under the National Electricity Law and will take on this function under the National Gas Law in all jurisdictions except Western Australia, where the Western Australian Economic Regulation Authority will perform this function. Under the new National Gas Law and Rules, the Australian Energy Regulator has enforcement, compliance monitoring, and economic regulatory functions. To perform these functions under the National Gas Law, the Australian Energy Regulator will be given identical powers to those it has under the National Electricity Law.

Information gathering powers

This Bill adopts the Australian Energy Regulator's information gathering powers under the National Electricity Law. They are designed to address ongoing issues of information asymmetry between regulated businesses and the regulator that were recognised by the Expert Panel.

The amendments enable the Australian Energy Regulator to obtain adequate information from industry to set efficient prices for energy services without placing an unnecessarily heavy administrative burden on industry, while supporting competition in the energy market and protecting commercially sensitive information.

Information on costs incurred in supplying pipeline services is a critical input into the regulatory process and is an essential starting point for determining regulated prices for services supplied in such a market. These provisions implement the concerns of the Expert Panel about the necessity of information provision in gas and electricity regulation.

The Bill includes search warrant provisions consistent with current criminal law policy and with the National Electricity Law. Search warrants are a tool for breaches of the legislative regime rather than economic regulation.

The National Gas Law gives the Australian Energy Regulator the ability to obtain information or documents from any person where such information or documents are required by the Australian Energy Regulator for the purpose of performing or exercising any of its functions and powers. The Australian Energy Regulator's information gathering powers under this provision extend to existing information. However, persons are not required to provide information or documents pursuant to such a notice where they have a reasonable excuse for not doing so, such as that the person is not capable of complying with the notice. Information that is the subject to legal professional privilege is also protected from disclosure under such a notice.

The Bill includes the concepts of a 'general regulatory information order' and a 'regulatory information notice' that were developed in the 2007 amendments to the National Electricity Law. The law outlines the processes by which these instruments may be used by the Australian Energy Regulator.

A general regulatory information order is an order made by the Australian Energy Regulator that requires each regulated service provider of a specified class, or each related provider of a specified class, to provide the information specified in the order and to prepare, maintain or keep information described in the notice in a manner specified in the order. A regulatory information notice is a notice prepared and served by the Australian Energy Regulator that requires the regulated network service provider, or a related provider, named in the notice to provide the information specified in the notice and to prepare, maintain or keep information described in the notice in a manner and form specified in the notice.

The Australian Energy Regulator can only serve a regulatory information notice or make a general regulatory information order if it considers it reasonably necessary for the performance or exercise of its functions. In considering whether it is reasonably necessary, the Australian Energy Regulator must have regard to the matters to be addressed in the service of the regulatory information notice or the making of the general regulatory information order, and the likely costs that may be incurred by an efficient network service provider or efficient related provider in complying with the notice or order. The Australian Energy Regulator must also exercise its powers under this section in a manner that will or is likely to contribute to the achievement of the national gas objective.

A key component of this Bill is to extend the Australian Energy Regulator's information gathering powers to parties related to the service provider. This mechanism is designed to ensure that the Australian Energy Regulator has sufficient information to perform its functions and to discourage service providers from using corporate structures to avoid disclosure of information to the regulator, without allowing the Australian Energy Regulator to unduly interfere in competitive commercial arrangements.

The National Gas Law requires the Australian Energy Regulator to consider additional matters in considering whether it is reasonably necessary to serve a regulatory information notice or make a general regulatory information order for related providers. One of the matters the Australian Energy Regulator is required to consider is whether the service provider is able to provide sufficient and timely information to address the reasons for issuing the information instrument. The Australian Energy Regulator is also required to consider the extent to which it considers the services provided by the related provider are a contributing service provided on a genuinely competitive basis having regard to the nature of ownership and control between the related provider and the network service provider and the competitiveness of the market in which the person provides services to the service provider.

The National Gas Law identifies the functions to which the general regulatory information order and regulatory information notice powers extend. A regulatory information instrument must not be served solely for the Australian Energy Regulator's enforcement functions, appeals or collecting information for the preparation of a service provider performance report. Outside of these areas, the tests for issuing a regulatory information instrument are sufficient to ensure these powers do not create an unnecessary regulatory burden.

The National Gas Law also recognises that there are certain circumstances where the Australian Energy Regulator needs to issue an urgent regulatory information notice. In such circumstances, the Australian Energy Regulator is required to identify that the notice is an urgent regulatory information notice and give reasons as to why the regulatory information notice is an urgent notice.

The National Gas Law gives the Australian Energy Regulator the ability to make certain assumptions in instances where the regulated network service provider or related provider does not provide the information to the Australian Energy Regulator in accordance with the applicable regulatory information instrument or provides information that is insufficient.

These instruments are intended to clearly set out the information requirements on service providers to report annually and at an access arrangement review. By creating clear obligations, regulators, users, related providers and network service providers will be able to more clearly ascertain compliance with the law and the efficiency of prices for services. As well, the framework set out in the National Gas Law should help to avoid information being collected in several different ways under different parts of the National Gas Rules.

These amendments will require the Australian Energy Regulator to take into account the comments received, including the likely costs of compliance, before issuing a regulatory information notice. Consultation is intended to ensure the Australian Energy Regulator does not exercise its powers without regard to why it requires the information and taking into account the regulatory burden that may be imposed by the request for information.

Protection of confidential information

This Bill also establishes a comprehensive framework covering the circumstances where the Australian Energy Regulator is authorised to disclose confidential information. The Trade Practices Act generally requires the Australian Energy Regulator keep information confidential but allows the National Electricity Law and National Gas Law to specify how and when the Australian Energy Regulator may disclose confidential information. In the regulatory framework for energy, while there is a legitimate need to protect confidential information, particularly that relating to businesses in competitive parts of the market, there is also a need to disclose much of a network service provider's information to the public to allow adequate scrutiny of its costs.

Accordingly, the Australian Energy Regulator is able to disclose confidential information with consent, where aggregated, for proceedings or to accord natural justice. Additionally, where none of the previous options apply or are appropriate, the Australian Energy Regulator is able to disclose information where it would not cause detriment or if the public benefit of disclosing outweighs the detriment. The Australian Energy Regulator must give affected parties 5 business days to comment on such a disclosure and if submissions are received, must issue a further disclosure notice and wait a further 5 business days before disclosure. These decisions are also subject to merits review in the Australian Competition Tribunal.

Performance reporting

This Bill replicates the power given to the Australian Energy Regulator under the National Electricity law to publish performance reports on the financial and operational performance of service providers. This is a key aspect of transparency for service providers and will be of great benefit to gas users and consumers. Performance reporting on regulated services is an important element of the regulatory framework as it allows the Australian Energy Regulator to consider whether the service providers are complying with the regulatory determinations, and to promote competition by comparison for monopoly service providers.

In preparing a report on the financial and operational performance of a network service provider, the National Gas Law provides that the Australian Energy Regulator can only prepare a report in a manner that will, or is likely to, contribute to the achievement of the National Gas Objective. The National Gas Law also provides that the report prepared by the Australian Energy Regulator can include performance against network service standards, customer service standards, and profitability of the regulated services. The report may also cover other performance of service providers directly related to the economic regulatory functions of the Australian Energy Regulator. The purpose of these requirements is to provide the regulator and users and consumers with information about how the regulated service provider is performing more broadly to ensure it can deliver reliable and efficient pipeline services.

The National Gas Law also requires the Australian Energy Regulator, before preparing a performance report under the law, to consult with persons specified in the Rules and in accordance with the consultation process outlined in the Rules. The initial rules require the Australian Energy Regulator to consult with service providers, associations representing service providers, and the public generally in order to determine the appropriate priorities and objectives to be addressed in the preparation of a performance report. In preparing the performance report, the Australian Energy Regulator is also required to consult with jurisdictional safety and technical regulators to avoid unnecessary duplication.

The Rules also provide the service provider with an opportunity, at least 30 business days before the publication of the report, to submit information and make submissions relevant to the subject matter of the report. The service provider must be given an opportunity to comment on material of a factual nature to be included in the report. This provides an opportunity for affected stakeholders to be consulted while at the same time encouraging transparency and insight into a service provider's performance.

Coverage of pipelines

The National Gas Law retains the structure of the Gas Code where economic regulation is only applied to covered pipelines which exhibit a level of market power where the benefits of regulation outweigh the costs. Coverage of pipelines is a process for determining whether or not economic regulation should or should not be applied to the services provided by a particular pipeline. This decision is made by the relevant State or Commonwealth Minister, on the recommendation of the National Competition Council. The decision of whether or not to regulate is based upon whether the pipeline coverage criteria are satisfied. Consistent with the current Gas Code, a coverage decision may apply to more or less of the pipeline than is the subject of the application or recommendation.

The Gas Code coverage criteria have been amended in response to the Productivity Commission Review of the Gas Access Regime such that a 'material' increase in competition in at least one market is required before coverage should be applied. This, consistent with similar amendments to Part IIIA of the Trade Practices Act, ensures that the increase in competition needs to be non trivial before regulation is imposed.

The National Gas Law does not apply economic regulation to pipelines that do not meet the coverage criteria. Any person can apply to bring a pipeline under the regime or for a pipeline to become uncovered at any time, unless the pipeline has been granted a greenfields pipeline incentive.

This Bill streamlines the pipeline classification and coverage process. Under the National Gas Law, classification and coverage will be dealt with simultaneously. In this process the National Competition Council will make draft and final recommendations on coverage at the same time as making draft and final decisions on the classification of the pipeline. That final classification decision will therefore determine who is to be the relevant Minister for making the decision on whether the pipeline should be covered or uncovered under the regime. As in the Gas Pipelines Access Law, the relevant Minister so determined will make the final coverage determination based on the advice of the National Competition Council.

Light regulation of services

Under the National Gas Law not all covered pipelines will necessarily be subject to upfront price regulation in an access arrangement. This Bill implements the recommendation of the Productivity Commission that a light handed form of regulation be introduced into the gas access regime which does not involve upfront setting of reference tariffs through the access arrangement approval process. In its response to the review, the Ministerial Council on Energy largely accepted the thrust of the Productivity Commission's proposals and adapted them to be consistent with the new governance framework. It should be noted that both the Productivity Commission and the Ministerial Council have recognised that binding arbitration, as a core requirement for certified effective access regimes, needs to be able to be applied to pipelines under this form of regulation.

The National Gas Law allows service providers operating covered pipelines to apply for the services offered by means of that pipeline to be 'light regulation services'. The National Competition Council is the body charged with the responsibility of deciding whether or not to make a 'light regulation determination' in regard to a covered pipeline. A light regulation determination means that services provided by a pipeline are light regulation services and has effect until it is revoked.

Service providers offering light regulation services are not required to, but may, submit a limited access arrangement to the Australian Energy Regulator for approval. A limited access arrangement is an access arrangement without provision for price or revenue regulation. Service providers may wish to submit such an arrangement as it gives certainty over terms and conditions applicable to their pipeline services. Further, a limited access arrangement also means the Australian Energy Regulator, in resolving an access dispute, must apply the limited access arrangement terms and conditions. Even though limited access arrangements do not provide for price or revenue regulation, in an arbitration the Australian Energy Regulator will be able to set a price between the parties for the purpose of resolving the access dispute. However, the price would only be a price set between the parties to the dispute based upon the application of the revenue and pricing principles.

Service providers subject to light regulation will be required to make public the terms and conditions of access, including prices, for provision of those services. A service provider is also required by the National Gas Law not to engage in price discrimination.

The Ministerial Council has also agreed that the market status of the current covered pipeline networks in South Australia, Victoria and Western Australia makes them inappropriate for light regulation. These networks will be listed as designated pipelines in the initial regulations. Should market circumstances change, advice may be provided to the Ministerial Council by the Australian Energy Regulator and the Council may decide to pass a regulation removing one or more of the pipelines from the list as designated pipelines.

Test for light regulation and form of regulation factors

Determining how covered pipeline services are to be regulated requires an assessment of the potential for market power to be exploited by a service provider. The National Gas Law requires the National Competition Council to consider the likely effectiveness of light regulation as opposed to access arrangement regulation in promoting access to pipeline services in light of the costs of each form of regulation. Accordingly, where light regulation can reduce the costs of regulation while still providing an effective check on a pipeline's market power, the light regulation option should be available. Light regulation may be particularly relevant for point to point transmission pipelines with a small number of users who have countervailing market power.

The National Gas Objective and 'form of regulation factors' guide this assessment of the form of regulation to apply to covered pipeline services. This framework effectively implements the Expert Panel recommendations and mirrors considerations in the National Electricity Law.

The first of the form of regulation factors assesses the presence and extent of any barriers to entry in a market for pipeline services. Many of the services provided by pipelines can be characterised as natural monopolies and need to be regulated to ensure that consumers' interests are met.

Another factor that predisposes pipelines towards natural monopoly status is the interdependent nature of network services. This means that it is usually more efficient to have one service provider provide a pipeline service to a given geographical area. Additionally it may be more efficient to have the same company provide other pipeline services to the same geographical area.

The second and third form of regulation factors require that the National Competition Council identify these interdependencies and network externalities as potential sources of market power.

The fourth form of regulation factor looks to consider the extent to which market power possessed by the owner, operator or controller of a pipeline by which services to be subject to regulation are provided is likely to be mitigated by countervailing market power possessed by the users of those services. This factor allows the National Competition Council to apply a lighter form of regulation to a pipeline that is subject to this type of countervailing market power from a major user.

Another factor that may cause the National Competition Council to consider a lighter form of regulation is the degree to which pipeline services can be substituted for other products. For example, electricity may also compete with natural gas for some or all of a customer's needs. The fifth and sixth form of regulation factors allow the National Competition Council to consider the presence and extent of substitutions for users to be provided with the particular service.

Finally, customers can only negotiate with service providers when they have adequate information, to determine whether or not payments required of them accurately reflect the efficient cost of providing the service. In a competitive market the efficient cost is revealed as competing providers seek to out bid each other down to the point where they are covering their costs plus a normal profit. Where a business is a natural monopoly this does not occur and it can be difficult for consumers and regulators to access information from natural monopoly service providers. The final form of regulation factor allows the National Competition Council to consider the extent to which there is adequate information available to users, to enable them to negotiate with the service provider on an informed basis.

Additionally, even within a pipeline regulated by an access arrangement, some services may still only be subject to arbitration rather than upfront price regulation. The form of regulation factors will guide the Australian Energy Market Commission in making rules which distinguish between these services.

General obligations on covered pipelines

The National Gas Law directly imposes a number of fundamental obligations on pipelines similar to the previous regime. Service providers and related parties are prohibited from preventing and hindering access, must comply with their queuing requirements and are subject to a number of ring fencing obligations including not carrying on a related business, restrictions on marketing staff and requirements about keeping separate and consolidated accounts for their business. Other details about ring fencing and exemptions from ring fencing requirements are in the Rules. Just as in the current regime, producers are required to offer terms and conditions of sale from the exit flange of their facility to ensure there are no gaps in the access regime.

The approval process for contracts between service providers and associates has been altered, so that approval from the regulator is not needed for every such contract. It is now left to the discretion of the service provider as to whether such a contract is likely to breach the associate contract provisions of the National Gas Law, by reducing competition. If other parties or the Australia Energy Regulator believe that a party is in breach of the associate contract provisions, the Australian Energy Regulator or an affected party may enforce those provisions. This approach is similar to arrangements in the Trade Practices Act 1974. It achieves an appropriate balance between reducing the regulatory burden on the pipeline industry and protecting the interests of downstream users of pipeline services.

Access arrangements

Access arrangements have been the central feature of pipeline regulation under the Gas Code and will continue to have this position under the National Gas Law. The law requires service providers who are subject to price regulation to submit access arrangements and revisions to access arrangements to the Australian Energy Regulator in accordance with the Rules. The Australian Energy Regulator is also required to apply an access arrangement during an access dispute. The processes for submitting, approving and revising access arrangements will be contained in the National Gas Rules to allow flexible development through the rule change process. In the initial Rules the approval processes for access arrangements will now be subject to clear time limits. The benefits of this are that the approval of access arrangements will be expedited and certainty as to what is expected of all parties has been improved.

The intention has been for the Rules concerning access arrangements to replicate the economic regulatory model operating under the Gas Code while implementing the Ministerial Council on Energy's response to both the Productivity Commission Review of the Gas Access Regime and the Expert Panel on Energy Access Pricing. In a small number of areas, such as pricing principles for distribution networks, the gas regime has been aligned to the regime in the National Electricity Rules to promote greater consistency in regulation. Generally, consistency with current practice will ensure business and user certainty in the transition between the current and new regimes.

Consistent with the Gas Code, the National Gas Law ensures that access arrangements do not infringe upon protected existing contractual rights and service providers are free to negotiate terms and conditions of access with users which differ from an applicable access arrangement.

Access arrangement decision making framework

A key aspect of the regulatory framework established by this Bill is the recognition of a 'fit for purpose' decision making framework as recommended by the Expert Panel.

The National Gas Law reflects the Ministerial Council on Energy policy intention to establish a 'fit for purpose' decision making model by allowing the rules to set out the decision making framework and determine the level of discretion the Australian Energy Regulator has in dealing with the different aspects of a regulatory determination. The decision making model adopted in this Bill mirrors the decision making model established under the National Electricity Law and is designed to ensure a consistent approach to regulatory decision making in electricity and gas regulation.

The key aspect of the 'fit for purpose' framework is that it best balances the aims of reducing the risk of regulatory error, balancing the interests of consumers and the service provider, and allowing for the regulatory regime to evolve where required.

The 'fit for purpose' framework acknowledges that in a service provider's proposal, there is such a range of dimensions and inter relationships between revenue and price components, that the regulatory framework should retain the capacity to require the regulator to have a presumption of acceptance, have discretion to determine an outcome or apply a more specific test to different elements of the proposal. Under this model, the regulator is not given absolute discretion for different elements of the proposal, but is guided in its decision making by the National Gas Objective, the revenue and pricing principles, and the fit for purpose framework established in the National Gas Rules.

The 'fit for purpose' framework provides the appropriate degree of flexibility by allowing the National Gas Rule to evolve and adapt the model of regulatory decision making according to the degree of regulatory risk or certainty desired by the market.

Increasing investment in existing pipelines

The initial Rules will now include a 'positive economic value' test for investment in existing pipelines designed to capture net increases in producer and consumer surpluses in upstream and downstream gas markets, whilst also capturing the system security and reliability benefits that were considered by regulators to constitute system wide benefits.

This test will ensure the assessment of pipeline investments unambiguously includes benefits that accrue to users and end users of gas when they are able to purchase additional quantities of gas, or to gas producers when they are able to sell additional quantities of gas. This should assist in promoting efficient investment in our existing pipeline network to meet our increasing demand for natural gas.

Access disputes

This Bill adopts the procedure for disputes relating to access used in the National Electricity Law. Under the new Part 6, a dispute occurs when a user or prospective user is unable to agree with a service provider about one or more aspects of access to a regulated pipeline service.

These provisions will allow the Australian Energy Regulator to act as arbitrator over parties to an access dispute. They will establish the Australian Energy Regulator's powers and make its access determinations binding on the parties to an access dispute. This access dispute framework is consistent with the 2007 amendments to the National Electricity Law, 1995 Competition Principles Agreement and Parts IIIA and XIC of the Commonwealth Trade Practices Act.

Under the new process the Australian Energy Regulator may terminate access disputes where it is clear that the service sought in the dispute is capable of being provided on a genuinely competitive basis. The Bill also ensures that existing contractual rights are protected in access disputes and that, by obliging the Australian Energy Regulator to take into account the revenue and pricing principles, service providers are appropriately compensated for providing access.

Greenfields pipeline incentives

This Bill continues the greenfields incentives established in 2006 under the Gas Pipelines Access Law. The greenfields incentives allow the relevant Minister to make, following a recommendation by the National Competition Council, a no coverage determination that is binding for a period of 15 years (a 15 year no coverage determination) if a new pipeline does not meet the pipeline coverage criteria.

However, the 15 year no coverage assessment process may not be a sufficiently timely process to provide regulatory certainty for complex international greenfields gas pipeline projects. For this reason, the Ministerial Council on Energy also decided to implement the option of a price regulation exemption (also having effect for 15 years) for international transmission pipelines bringing gas from a source outside Australia.

The Ministerial Council on Energy implemented these two measures in the existing gas access regime in June 2006 and the relevant provisions (set out in Part 3A of the Gas Pipelines Access Law) are replicated in the National Gas Law.

Competitive tender processes

This Bill retains and simplifies the Gas Code provisions applying to pipelines built under competitive tendering arrangements. In the initial Rules, the competitive tendering process has been improved to increase the level of certainty for pipeline developers, by allowing pipeline users or other proponents (such as local councils), to seek approval of a tender process as a competitive tender process with a special regulatory status. This will

guarantee that the terms negotiated through the competitive tendering process are reflected in access arrangements. This provision will support the Ministerial Council on Energy policy of increased penetration of natural gas services in Australia. This process will be particularly beneficial for encouraging investment in pipelines in new and unproven markets, offering access to new gas services for consumers at competitive and sustainable tariffs. Similar to the greenfields incentives, pipelines subject to an access arrangement resulting from a competitive tendering process become uncovered upon the expiry of those arrangements.

Gas Market Bulletin Board

This Bill includes provisions establishing a Natural Gas Services Bulletin Board. The provisions in the National Gas Law are designed to support the Bulletin Board rules being developed as part of the Gas Market Leaders Group process. The purpose of the Bulletin Board is to both to facilitate trade in natural gas and markets for natural gas services through the provision of system and market information which is readily available to all interested parties, including the general public, and assist in emergency management through the provision of system and market information. The Bulletin Board will also provide a platform for future gas market transparency measures such as a gas market statement of opportunities.

The law provisions establish the Bulletin Board Operator, define the scope of its functions and allow rules to be made supporting the Bulletin Board. The law provides civil immunity to the Bulletin Board operator for the performance of its functions and immunity to persons who provide information in accordance with the law and rules other than through negligence or bad faith. The law provisions also protect information given to the Bulletin Board Operator by restricting what its employees or contractors can do with the information and allow the Bulletin Board Operator to collect fees to fund its operations. The Bulletin Board Operator will initially be the Victorian Energy Networks Corporation but will be transferred to the Australian Energy Market Operator when that body is established.

The initial National Gas Rules, will also include Rules to support the operation of the Bulletin Board. These rules were developed as part of the Gas Market Leaders Group process. The rules contain a variety of detailed requirements about the operation of the Bulletin Board, registration of participants, the provision of information and the creation of more detailed bulletin board procedures by the Bulletin Board Operator. The key requirements are that Bulletin Board facility operators provide information about the nameplate rating of their plant, three day capacity outlooks and actual flow data which will be reconciled against the three day outlooks. The Bulletin Board will also contain an emergency page that will be used to help market participants and the National Gas Emergency Response Advisory Committee respond to gas emergencies. The Bulletin Board Rules will be part of the National Gas Rules and will be open for further development by the Australian Energy Market Commission through the rule change process following their commencement.

Enforcement

The new National Gas Law makes a number of important changes in relation to the enforcement of the National Gas Law, the Regulations made under the National Gas (South Australia) Act 2008and the National Gas Rules.

Under the new regulatory regime, the Australian Energy Regulator is able to bring proceedings for a breach of the National Gas Law, the Regulations made under the National Gas (South Australia) Act 2008 or the National Gas Rules.

The Australian Energy Regulator will be able to bring proceedings for a breach of the National Gas Law, the Regulations or the Rules in a State or Territory Supreme Court or the Federal Court, as appropriate. For the purposes of such proceedings, the Court may make an order declaring that the person is in breach of the National Gas Law, the Regulations or the Rules. If the Court makes such a declaration, the Court may also order the person to pay a civil penalty (for prescribed civil penalty provisions), to desist from the breach, to remedy the breach or to implement a compliance program.

As is the case under the current National Electricity Law, provision is made for the Regulations to prescribe provisions of the National Gas Rules, as well as provisions of the new National Gas Law, the breach of which will attract a civil penalty. However, under the new regulatory regime, the current graduated civil penalties scheme will be replaced by a maximum civil penalty of $100,000 and $10,000 for every day during which the breach continues (in the case of a body corporate) and of $20,000 and $2,000 for every day during which the breach continues (in case of a natural person). The National Gas Law has not adopted a graduated civil penalty scheme rather, the civil penalties regime has been simplified so that the Courts will determine the appropriate amount of the civil penalty having regard to the circumstances of each particular breach.

The Australian Energy Regulator may also apply to the Court for an injunction where a person has engaged in, is engaging in or is proposing to engage in conduct in breach of the National Gas Law, the Regulations or the Rules.

Under the National Gas Law a person who attempts to commit a breach of a civil penalty provision is taken to have committed that breach and persons who are in any way directly or indirectly knowingly concerned in, or party to, a breach of a civil penalty provision by a relevant participant are also liable for a breach of that provision. As is the case under the current National Electricity Law, officers of corporations which breach a civil penalty provision will also be liable for that breach if they knowingly authorised or permitted it.

The last element of the new enforcement regime is the ability of the Australian Energy Regulator to serve an infringement notice for breaches of civil penalty provisions. A person who receives such a notice may either pay the infringement penalty, or defend, in court, any proceedings brought by the Australian Energy Regulator in respect

of the breach. The amount of the infringement penalty is $20,000 (for a body corporate) and $4,000 (for a natural person), or such lesser amount as is prescribed by the Regulations for the particular civil penalty provision.

While persons other than the Australian Energy Regulator cannot bring general enforcement proceedings for a breach of the National Gas Rules, the National Gas Law allows other parties to enforce provisions to be prescribed as conduct provisions by the Law or Regulations. If a provision is prescribed as a conduct provision, a person may apply to a court for an order that another person is in breach of the provision. The court then has the power to make various orders including injunctions to prevent the person engaging in the conduct or the payment of damages. These provisions recognize that market participants are best placed to enforce some of the obligations under the regime and should be compensated for any damage they suffer for conduct in breach of the Law and Rules.

Judicial Review

As with the National Electricity Law, judicial review in State Supreme Courts is provided for decisions of the Australian Energy Market Commission and also for the Bulletin Board Operator. Commonwealth bodies performing functions under the National Gas Law are subject to judicial review under the Administrative Decisions (Judicial Review) Act 1977 of the Commonwealth.

Merits review

This package will include a mechanism for limited merits review by the Australian Competition Tribunal of specified regulatory decisions under the National Gas Law. This merits review model mirrors the model adopted in the National Electricity Law to ensure consistent regulation of electricity and gas. The decisions subject to merits review include coverage decisions, decisions on greenfields incentives, light regulation determinations, approvals of associate contracts, ring fencing decisions and final access arrangement decisions.

These amendments will allow a range of affected parties including service providers, users and consumer associations to seek review of decisions made by the various decision makers under the National Gas Law.

Merits review will only be available if the original decision contained errors of fact, if the original decision maker's discretion was incorrectly exercised or their decision was unreasonable, having regard to all the circumstances.

An applicant for merits review will need to seek leave from the Tribunal to bring an action for review and, amongst other things, will need to meet a materiality threshold. The Tribunal must be satisfied that there is a serious issue to be heard. In addition, for revenue related errors, the amount at issue as a result of all of the alleged grounds of review must exceed $5 million or 2 per cent of average annual regulated revenue. An application for leave setting out the grounds of review must be made within 15 business days of a reviewable decision being published.

There will be a relatively wide scope for persons and groups to intervene in merits review proceedings, once commenced. Persons with a sufficient interest in the original decision are able to intervene, as well as jurisdictions, and user and consumer associations and interest groups with the leave of the Tribunal. Specific provision is made for the intervention of user and consumer associations and interest groups to overcome legal arguments that regulatory decisions are not sufficiently connected to their concerns or members.

The Tribunal will be able to affirm or vary the original decision, or set the decision aside and either substitute a new decision or remit the matter to the Australian Energy Regulator for reconsideration.

Consistent with the regime under the Gas Code and the desire to make the original decision making process meaningful, arguments to make out a ground of review must be based upon submissions to the original decision maker or the NCC when it is making a recommendation. The original decision maker is also able to raise related and consequential matters in a review to ensure that the Tribunal takes account of broader issues affecting the decision, and is able to defend its decision in full. The Tribunal is also required to have regard to any public policy documents which have guided the original decision maker in its decision to help avoid unnecessary policy divergence between the Tribunal and the original decision maker.

Rule making under the National Gas Law

The National Gas Law embodies a rule change process identical to that contained within the National Electricity Law. The Australian Energy Market Commission may make a Rule following a Rule change proposal if it is satisfied that the Rule will, or is likely to, contribute to the achievement of the National Gas Objective. As with the National Electricity Law, the Australian Energy Market Commission, although not being able to initiate substantive rule changes itself, is able to solve the issues or problems raised by a rule change proposal by implementing a solution which it considers best contributes to the achievement of the national gas objective.

The Rule change process set out in the new National Gas Law is transparent and involves the opportunity for significant input by stakeholders. Thorough consultation must be carried out on rule changes, with requirements for fully reasoned draft and final determinations. There is also the ability for fast tracked amendments by gas market regulatory bodies where adequate prior consultation has been undertaken. A fast tracked rule change process proceeds straight to a draft determination.

Given the need to have Rules in place at the same time as the National Gas Law comes into operation, the initial National Gas Rules will not be made under this Rule change process. Instead, they will be made, on the recommendation of the Ministerial Council on Energy, by a Ministerial notice. The initial Rules will largely consist of the provisions of the current National Gas Code as amended to accommodate the reforms contained in the new National Gas Law, the new governance and institutional arrangements, the status of the Rules as law, and various other consequential modifications. However, once made, these Rules will be subject to change in accordance with

the new Rule change process, including through the application of the Rule making test and the public consultation arrangements. It is important to note that this initial Rule making power can only be exercised once.

While the Bill includes the power to levy fees for rule change applications, it has also been decided not to levy any such fees in the initial Regulations. This recognises the public interest in an open and accessible rule change process but allows further action should the revised process lead to a large number of vexatious applications.

Regulations made under the National Gas Law

As with the National Electricity (South Australia) Act 1996, this Bill allows Regulations to be made where they are contemplated by, or necessary or expedient for the purpose of, the National Gas Law. However, the extent of the Regulations that may be made is constrained by the provisions of the National Gas Law, and Regulations cannot be made to implement extensive changes. Regulations will only deal with the prescription of civil penalty and conduct provisions, designated pipelines, some transitional issues and other minor and machinery matters. An important safeguard is that Regulations can only be made with the unanimous agreement of all relevant Ministerial Council on Energy Ministers.

Savings and transitionals

To ensure a smooth transition to the National Gas Law and Rules, savings and transitional provisions are included in the new Law and initial Rules. Additional savings and transitional provisions may also be included in the Regulations, and a specific regulation making power has been included under the National Gas (South Australia) Act 2008 for this purpose. The savings and transitional provisions contained in the National Gas Law are designed to ensure a smooth transition to the new regime for all regulated pipelines.

Interpretation

Like the existing Gas Pipelines Access Law, the National Gas Law includes a schedule of interpretive provisions. This Schedule 2 to the National Gas Law means the Law is subject to uniform interpretation provisions in all participating jurisdictions.

As I noted at the beginning of this speech, this Bill will strengthen and improve the quality, timeliness and national character of the governance and economic regulation of the national gas market, for the benefit of South Australians and all Australians.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal. It provides for the name (also called the short title) of the proposed Act.

2—Commencement

Clause 2(1) provides for the measure to be brought into operation by proclamation. Clause 2(2) makes it clear that the Governor may, if necessary, bring different provisions of the Schedule into operation on different days. Clause 2(3) excludes the operation of section 7(5) of the Acts Interpretation Act 1915 due to the fact that this measure forms part of a co operative legislative scheme involving other Australian jurisdictions.

3—Interpretation

A key aspect to the definitions under the Act is that there will be a point of distinction between the National Gas Law, being a law to be applied in the jurisdiction of the scheme participants, and the National Gas (South Australia) Law, being the National Gas Law as it applies in this State. The clause also provides that definitions included in the law (as applying because of this measure) also apply for the purposes of the Act.

4—Crown to be bound

This clause provides that the legislation binds the Crown.

5—Application to coastal waters

This clause applies the legislation to the coastal waters of the State.

6—Extra territorial operation

This clause provides for the extra territorial operation of the legislation.

Part 2—National Gas (South Australia) Law and National Gas (South Australia) Regulations

7—Application of National Gas Law

This clause applies the National Gas Law set out in the Schedule as a law of South Australia. The applied law is to be referred to as the National Gas (South Australia) Law.

8—Application of regulations under National Gas Law

This clause provides that the regulations in force under Part 3 apply as regulations in force for the purposes of the National Gas (South Australia) Law. The regulations are to be referred to as the National Gas (South Australia) Regulations.

9—Interpretation of some expressions in National Gas (South Australia) Law and National Gas (South Australia) Regulations

This clause contains a number of definitions used for the purposes of the National Gas (South Australia) Law and the National Gas (South Australia) Regulations. These definitions relate to expressions whose meaning necessarily varies according to the jurisdiction in which the National Gas Law is being applied.

Part 3—Making of regulations and rules under National Gas Law

10—Definitions

This clause provides that for the purposes of this Part a reference to the National Gas Law is a reference to the law as in force for the time being.

11—General regulation making power for National Gas Law

This clause enables the Governor to make regulations to give effect to the National Gas Law on the unanimous recommendation of the Ministers of the participating jurisdictions. In view of the interstate application of laws scheme that is based on this measure and regulations made under the Act, Parliamentary disallowance of the regulations is excluded.

12—Specific regulation making power

This clause enables the Governor to make regulations of a transitional nature relating to the transition from the Gas Code under the current Act (the Gas Pipelines Access (South Australia) Act 1997) to this new scheme.

13—Making of rules

In view of the interstate application of Rules made under this scheme, it is appropriate that the Rules be excluded from the operation of the South Australian Subordinate Legislation Act 1978.

Part 4—Cross vesting of powers

14—Conferral of powers on Commonwealth Minister and Commonwealth bodies to act in this State

This clause provides for the Minister of the Commonwealth administering the Australian Energy Market Act 2004 of the Commonwealth (the Commonwealth Minister), the Australian Energy Regulator, the National Competition Council and the Australian Competition Tribunal to do acts in or in relation to this State in the performance or exercise of a function or power conferred by the national gas legislation of another participating State or Territory.

15—Conferral of powers on Ministers of other participating States and Territories to act in this State

This clause provides for the Minister of another participating State or Territory to do acts in or in relation to this State in the performance or exercise of a function or power conferred by the national gas legislation of another participating State or Territory.

16—Conferral of functions or powers on State Minister

This clause provides that if the national gas legislation of another participating State or Territory confers a function or power on the Minister, the Minister may perform that function or exercise that power.

Part 5—General

17—Exemption from taxes

This clause provides for an exemption from State duties or taxes in relation to certain transfers of assets or liabilities that are made for the purposes of ensuring that a person does not carry on a business of producing, purchasing or selling natural gas or processable gas in breach of any ring fencing requirements of any national gas legislation or for the purpose of the separation of certain businesses or business activities as required by an Australian Energy Regulator ring fencing determination.

18—Actions in relation to cross boundary pipelines

This clause provides that if any action is taken under the national gas legislation of a participating jurisdiction with respect to a cross boundary pipeline by a relevant Minister or a Supreme Court of the jurisdiction each other relevant Minister or Supreme Court in any other participating jurisdiction in which the pipeline is situated is also taken to have taken that action. No appeal is permitted against any such action by a relevant Minister except in the jurisdiction with which the pipeline is most closely connected.

19—Conferral of functions and powers on Commonwealth bodies

This clause provides that a provision of the proposed Act or regulations is to be construed so as not to exceed the legislative power of the Parliament, in particular with respect to a provision that appears to impose a duty on the Commonwealth Minister, the Australian Energy Regulator, the National Competition Council or the Australian Competition Tribunal.

Part 6—Repeal of Gas Pipelines Access (South Australia) Act 1997

20—Repeal of Gas Pipelines Access (South Australia) Act 1997

The Gas Pipelines Access (South Australia) Act 1997 is to be repealed.

Part 7—Amendment of this Act when Offshore Petroleum Act 2006 commences

21—Amendment of this Act when Offshore Petroleum Act 2006 commences

This clause provides for the substitution of the definitions of adjacent area of this jurisdiction and adjacent area of another participating jurisdiction in proposed section 9(1) on the commencement of section 7 of the Offshore Petroleum Act 2006 of the Commonwealth.

Part 8—Amendment of Australian Energy Market Commission Establishment Act 2004

22—Amendment of Australian Energy Market Commission Establishment Act 2004

This clause makes consequential amendments to the Australian Energy Market Commission Establishment Act 2004.

Schedule 1—National Gas Law

The National Gas Law constitutes the Schedule.

Chapter 1—Preliminary

Part 1—Citation and interpretation

1—Citation

Provides that this Law may be referred to as the National Gas Law (the NGL).

2—Definitions

Sets out definitions used in the NGL.

3—Meaning of civil penalty provision

Defines 'civil penalty provision.'

4—Meaning of conduct provision

Defines 'conduct provision.'

5—Meaning of prospective user

Defines 'prospective user.'

6—Meaning of regulatory obligation or requirement

Defines 'regulatory obligation or requirement.'

7—Meaning of regulatory payment

Defines 'regulatory payment.'

8—Meaning of service provider

Defines 'service provider.'

9—Passive owners of scheme pipelines deemed to provide or intend to provide pipeline services

Provides that passive owners of scheme pipelines are deemed to provide pipeline services.

10—Things done by 1 service provider to be treated as being done by all of service provider group

Provides that things done by 1 service provider of a pipeline are to be treated as being done by all service providers of the pipeline.

11—Local agents of foreign service providers

Places liability for the actions of foreign service providers on their local agents.

12—Commissioning of a pipeline

Defines when a pipeline is deemed to be commissioned for the purposes of the NGL.

13—Pipeline classification criterion

Sets out the pipeline classification criterion.

14—Jurisdictional determination criteria—cross boundary distribution pipelines

Sets out the pipeline jurisdictional determination criteria.

15—Pipeline coverage criteria

Sets out the pipeline coverage criteria.

16—Form of regulation factors

This provision sets out the form of regulation factors under the NGL. These mirror the factors used in the NEL.

17—Effect of separate and consolidated access arrangements in certain cases

Sets out how pipelines with multiple access arrangements and multiple pipelines covered by a single access arrangement are to be treated.

18—Certain extensions to, or expansion of the capacity of, pipelines to be taken to be part of a covered pipeline

Provides that extensions and expansions to covered pipelines are to be treated as part of the covered pipeline if the applicable access arrangement provides that they will be.

19—Expansions of and extensions to covered pipeline by which light regulation services are provided

Provides that extensions and expansions of pipelines that provide light regulation services are to be considered covered pipelines, unless the pipeline is subject to a limited access arrangement or the AER has determined otherwise.

20—Interpretation generally

Provides that Schedule 2 to the NGL, which contains interpretation provisions, applies to the NGL, to Regulations made under the National Gas (South Australia) Act 2008 and to the National Gas Rules made under the NGL.

Part 2—Participating jurisdictions

21—Participating jurisdictions

Provides for the participating jurisdictions, which will be South Australia together with the Commonwealth, any other State and any Territory that has in place a law that applies the NGL as a law of that jurisdiction.

22—Ministers of participating jurisdictions

Provides for the relevant Ministers of the participating jurisdictions.

Part 3—National gas objective and principles

Division 1—National gas objective

23—National gas objective

The NGL objective is designed to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.

Division 2—Revenue and pricing principles

24—Revenue and pricing principles

Sets out the revenue and pricing principles.

Division 3—MCE policy principles

25—MCE statements of policy principles

Provides that the Ministerial Council on Energy (MCE) may issue statements of policy principles in relation to any matters that are relevant to the functions and powers of the Australian energy Market Commission (AEMC). Statements must be published in the South Australian Government Gazette by the AEMC.

Part 4—Operation and effect of National Gas Rules

26—National Gas Rules to have force of law

Provides for the Rules to have the force of law in each of the participating jurisdictions.

Chapter 2—Functions and powers of gas market regulatory entities

Part 1—Functions and powers of the Australian Energy Regulator

Note—

This Part provides for the functions and powers of the Australian Energy Regulator established by section 44AE of the Trade Practices Act 1974 of the Commonwealth (the TPA).

Division 1—General

27—Functions and powers of the AER

Sets out the AER's functions and powers.

28—Manner in which AER must perform or exercise AER economic regulatory functions or powers

Makes provision in relation to the manner in which the AER must perform or exercise the AER's economic regulatory functions or powers.

29—Delegations

Provides that a delegation by the AER under section 44AAH of the TPA is effective for the purposes of the NGL, Regulations and Rules.

30—Confidentiality

Provides that the confidentiality provisions of section 44AAF of the TPA are effective for the purposes of the NGL, Regulations and Rules.

Division 2—Search warrants

31—Definitions

Sets out definitions for the purposes of this Division.

32—Authorised person

Provides that the AER may authorise persons to be authorised persons for the purposes of this Division.

33—Identity cards

Requires the AER to issue identity cards to authorised people.

34—Return of identity cards

Requires identity cards to be returned to the AER.

35—Search warrant

Provides for the issue of search warrants by a magistrate.

36—Announcement of entry and details of warrant to be given to occupier or other person at premises

Provides for announcement before entry to a place in execution of a search warrant and requires certain details of a search warrant to be given to the occupier of premises.

37—Immediate entry permitted in certain cases

Provides a limited exemption from complying with section 36.

38—Copies of seized documents

Requires a certified copy of a seized document to be provided to the person from whom it was seized in execution of a search warrant.

39—Retention and return of seized documents or things

Provides for return of documents or other things seized in execution of a search warrant.

40—Retention of and return of documents or things

Provides for extension of the period within which a document or other thing must be returned.

41—Obstruction of persons authorised to enter

Creates an offence of obstructing or hindering a person in the exercise of power under a warrant, for which the penalty is a fine of up to $2,000 for a natural person or up to $10,000 for a body corporate.

Division 3—General information gathering powers

42—Power to obtain information and documents in relation to performance and exercise of functions and powers

Provides that the AER may serve notices requiring information to be furnished or documents to be produced and creates an offence of failing to comply with such a notice, for which the penalty is a fine of up to $2,000 for a natural person or up to $10,000 for a body corporate.

Division 4—Regulatory information notices and general regulatory information orders

Subdivision 1—Interpretation

43—Definitions

Defines terms used in this division.

44—Meaning of contributing service

Defines 'contributing service.'

45—Meaning of general regulatory information order

Defines 'general regulatory information order.'

46—Meaning of regulatory information notice

Defines 'regulatory information notice.'

47—Division does not limit operation of information gathering powers under Division 3

Provides that this division does not limit Division 3.

Subdivision 2—Serving and making of regulatory information instruments

48—Service and making of regulatory information instrument

Allows the AER to serve regulatory information instruments if it considers it reasonably necessary for the performance of its functions or powers. The AER may not issue an instrument for the purpose of investigating breaches, preparing a performance report or as part of a merits review.

49—Additional matters to be considered for related provider regulatory information instruments

Imposes additional considerations on the AER before issuing an information instrument to a related provider.

50—AER must consult before publishing a general regulatory information order

Requires the AER to consult before issuing a general regulatory information order.

51—Publication requirements for general regulatory information orders

Requires publication of a general regulatory information order.

52—Opportunity to be heard before regulatory information notice is served

Gives covered pipeline service providers and related providers an opportunity to be heard before the AER serves a regulatory information notice on them.

Subdivision 3—Form and content of regulatory information instruments

53—Form and content of regulatory information instrument

Sets out the information that is required to be in a regulatory information instrument and allows the AER to specify how the information is to be provided as well as what information must be prepared, maintained or kept to comply with the instrument.

54—Further provision about the information that may be described in a regulatory information instrument

Provides a non-exclusive list of the possible content of a regulatory information instrument.

55—Further provision about manner in which information must be provided to AER or kept

Provides a non-exclusive list of the information that the AER may require to be kept or provided under a regulatory information instrument.

Subdivision 4—Compliance with regulatory information instruments

56—Compliance with regulatory information notice that is served

Provides that a person served with a regulatory information notice must comply with the notice.

57—Compliance with general regulatory information order

Provides that a member of the class of persons to whom a regulatory information order applies must comply with it once it is published.

58—Exemptions from compliance with general regulatory information order

Allows the AER to exempt individuals or classes of people from complying with a general regulatory information order.

59—Assumptions where there is non compliance with regulatory information instrument

Allows the AER to make economic regulatory decisions on the basis of assumptions if a covered service provider or related provider fails to comply with a regulatory information instrument.

Subdivision 5—General

60—Providing to AER false and misleading information

Imposes penalties of $2,000 for a natural person and $10,000 for a body corporate for knowingly providing false or misleading information to the AER.

61—Person cannot rely on duty of confidence to avoid compliance with regulatory information instrument

Provides that a person may not rely on a duty of confidence to avoid compliance with a regulatory information instrument. This section also provides protection form civil liability for a person who complies provides information in accordance with a regulatory information instrument.

62—Legal professional privilege not affected

Provides that regulatory information instruments do not require people to provide information that is subject to legal professional privilege.

63—Protection against self incrimination

Provides that a natural person does not have to provide information in compliance with a regulatory information instrument of if it may make them liable to a criminal penalty in a participating jurisdiction.

Division 5—Service provider performance reports

64—Preparation of service provider performance reports

Allows the AER to prepare performance reports of covered pipelines.

Division 6—Miscellaneous matters

65—Consideration by the AER of submissions or comments made to it under this Law or the Rules

Requires the AER to consider submissions, made in response to an invitation to provide submissions, when making economic regulatory decisions.

66—Use of information provided under a notice under Division 3 or a regulatory information instrument

Allows the AER to use information collected under Division 3 to exercise its functions or powers under this law.

67—AER to inform certain persons of decisions not to investigate breaches, institute proceedings or serve infringement notices

Requires the AER to inform a person who provided information about a breach or potential breach of the law or rules, that they do not intend to investigate the breach or commence proceedings.

68—AER enforcement guidelines

Allows the AER to issue guidelines about how it will conduct enforcement actions under this law.

Part 2—Functions and powers of the Australian Energy Market Commission

Division 1—General

69—Functions and powers of the AEMC

Sets out the AEMC's functions and powers.

70—Delegations

Provides that a delegation by the AEMC under section 20 of the Australian Energy Market Commission Establishment Act 2004 is effective for the purposes of the NGL, Regulations and Rules.

71—Confidentiality

Provides that the confidentiality provisions of section 24 of the Australian Energy Market Commission Establishment Act 2004 are effective for the purposes of the NGL, Regulations and Rules.

72—AEMC must have regard to national gas market objective

Provides that the AEMC must have regard to the national gas market objective.

73—AEMC must have regard to MCE statements of policy principles in relation to Rule making and reviews

Provides that the AEMC must have regard to any relevant MCE statements of policy principles in making a Rule or conducting certain reviews.

Division 2—Rule making functions and powers of the AEMC

74—Subject matter for National Gas Rules

Provides for the subject matter of the Rules. Schedule 1 to the NGL also specifies matters about which the AEMC may make Rules.

75—Rules in relation to economic regulation of transmission systems

Provides for the making of Rules in relation to economic regulation of transmission systems.

76—National Gas Rules to always provide for certain matters relating to transmission systems

Provides that the Rules are at all times to provide for certain matters relating to transmission systems.

77—Documents etc. applied, adopted and incorporated by Rules to be publicly available

Requires documents applied, adopted or incorporated by a Rule to be publicly available.

Division 3—Committees, panels and working groups of the AEMC

78—Establishment of committees, panels and working groups

Provides for establishment of committees, panels and working groups by the AEMC.

Division 4—MCE directed reviews

79—MCE directions

Provides that the MCE may direct the AEMC to conduct reviews. The direction must be published in the South Australian Government Gazette.

80—Terms of reference

Provides for the terms of reference of MCE directed reviews.

81—Notice of MCE directed review

Requires the AEMC to publish notice of an MCE directed review.

82—Conduct of MCE directed review

Provides for the conduct of MCE directed reviews.

Division 5—Other reviews

83—Rule reviews by the AEMC

Provides for reviews by the AEMC other than MCE directed reviews.

Division 6—Miscellaneous

84—AEMC must publish and make available up to date versions of the National Gas Rules

Requires the AEMC to maintain an up to date copy of the Rules on its website and to make copies of the Rules available for inspection at its offices.

85—Fees

Provides for the AEMC to charge fees as specified in the Regulations.

86—Immunity from personal liability of AEMC officials

Protects AEMC officials from any personal liability as a result of performing their functions under this Law and the Rules.

Part 3—Functions and powers of Ministers of participating jurisdictions

87—Functions and powers of Minister of this participating jurisdiction under this Law

Allows the Minister administering the NGL in any particular jurisdiction to perform their functions under this law.

88—Functions and powers of Commonwealth Minister under this Law

Allows the Commonwealth Minister to perform their functions under this law.

Part 4—Functions and powers of the NCC

89—Functions and powers of NCC under this Law

Empowers the NCC to perform its functions under this law.

90—Confidentiality

Requires the NCC to protect confidential information while allowing it to share information with other regulatory bodies.

Part 5—Functions and powers of Tribunal

91—Functions and powers of Tribunal under this Law

Empowers the Australian Competition Tribunal to perform its functions under the NGL.

Chapter 3—Coverage and classification of pipelines

Part 1—Coverage of pipelines

Note—

This Chapter provides for the coverage and classification of pipelines for the haulage of natural gas.

Division 1—Coverage determinations

92—Application for recommendation that a pipeline be a covered pipeline

Provides that a person may apply for to the NCC for a determination that a pipeline be a covered pipeline.

93—Application to be dealt with in accordance with the Rules

Provides that an application to the NCC must be dealt with in accordance with the National Gas Rules.

94—NCC may defer consideration of application in certain cases

Provides that the NCC may defer consideration of an application under section 92, if an application has been made to the AER under the National Gas Rules in relation to approval of a competitive tender process or a tender approval decision has been made.

95—NCC coverage recommendation

Provides that the NCC must make a coverage recommendation to the relevant Minister in accordance with this Law and the National Gas Rules.

96—NCC must not make coverage recommendation if tender approval decision becomes irrevocable

Provides that the NCC must not recommend coverage if a tender approval decision becomes irrevocable.

97—Principles governing the making of a coverage recommendation

Provides that the NCC must give effect to the pipeline coverage criteria and have regard to the national gas objective when making a coverage recommendation.

98—Initial classification decision to be made as part of recommendation

Provides that the NCC must make an initial classification decision in relation to a pipeline the subject of a pipeline application as a transmission or distribution pipeline utilising the pipeline classification criterion. The NCC must also determine whether the pipeline is a cross boundary transmission or distribution pipeline and, if so, the participating jurisdiction with which the pipeline is most closely connected.

99—Relevant Minister's determination on application

Provides that the relevant Minister must, on receiving a coverage recommendation from the NCC, decide whether to make a coverage determination within a certain period of time and that a coverage determination or decision not to make a coverage determination must be made in accordance with this Law and the National Gas Rules.

100—Principles governing the making of a coverage determination or decision not to do so

Provides that the relevant Minister must give effect to the pipeline coverage criteria, have regard to the national gas objective and the coverage recommendation and must take into account certain submissions received when making a coverage determination or decision not to do so.

101—Operation and effect of coverage determination

Provides for the time when the coverage determination takes effect and that it continues to be a covered pipeline while the coverage determination is in effect.

Division 2—Coverage revocation determinations

102—Applications for a determination that a pipeline no longer be a covered pipeline

Provides that any person may apply to the NCC for a coverage revocation determination in accordance with the National Gas Rules.

103—Application to be dealt with in accordance with the Rules

Provides that the NCC must deal with an application for a coverage revocation determination in accordance with the National Gas Rules.

104—NCC coverage revocation recommendation

Provides that the NCC must make a coverage recommendation in accordance with this Law and the National Gas Rules.

105—Principles governing the making of a coverage revocation recommendation

Provides that the NCC must give effect to the pipeline coverage criteria and have regard to the national gas objective when making a coverage revocation recommendation.

106—Relevant Minister's determination on application

Provides that the relevant Minister must, on receiving a coverage revocation recommendation from the NCC, decide whether to make a coverage revocation determination within a certain period of time and that a coverage revocation determination or decision not to make a coverage revocation determination, must be made in accordance with this Law and the National Gas Rules.

107—Principles governing the making of a coverage revocation determination or decision not to do so

Provides that the relevant Minister must give effect to the pipeline coverage criteria, have regard to the national gas objective and the coverage recommendation and must take into account certain submissions received when making a coverage revocation determination or decision not to do so.

108—Operation and effect of coverage revocation determination

Provides for the time when the coverage revocation determination takes effect and that it continues to be a covered pipeline while the coverage revocation determination is in effect.

Part 2—Light regulation of covered pipeline services

Division 1—Making of light regulation determinations

Subdivision 1—Decisions when pipeline is not a covered pipeline

109—Application of Subdivision

Provides that this Subdivision applies if an application has been made for a coverage determination and the pipeline the subject of the application is not a pipeline prescribed by the National Gas Regulations to be a designated pipeline.

110—NCC's decision on light regulation of pipeline services

Provides that the NCC must decide whether to make a light regulation determination at the same time and within the same time as it makes a coverage recommendation and in accordance with this Law and the National Gas Rules.

Subdivision 2—Decisions when pipeline is a covered pipeline

111—Application of Subdivision

Provides that this subdivision applies if a service provider provides pipeline services by means of a covered pipeline that is not a designated pipeline and to which an applicable access arrangement approved or made under a full access arrangement decision applies.

112—Application

Provides that a service provider may apply to the NCC for a light regulation determination in accordance with the National Gas Rules and in respect of all of the pipeline services provided by means of the pipeline.

113—Application to be dealt with in accordance with the Rules

Provides that the NCC must deal with a light regulation determination application in accordance with the National Gas Rules.

114—NCC's decision on light regulation of pipeline services

Provides that the NCC must decide whether to make a light regulation determination within a certain period of time and that a light regulation determination or a decision not to make a light regulation determination must be made in accordance with this Law and the National Gas Rules.

Subdivision 3—Operation and effect of light regulation determinations

115—When light regulation determinations take effect

Provides when a light regulation determination takes effect and the circumstances in which it is revoked.

116—Submission of limited access arrangement for light regulation services

Provides that a service provider may, in respect of light regulation services, submit a limited access arrangement drafted in accordance with the National Gas Rules to the AER for approval under the National Gas Rules.

Division 2—Revocation of light regulation determinations

Subdivision 1—On advice from service providers

117—Advice by service provider that light regulation services should cease to be light regulation services

Provides that a service provider may advise the NCC in writing that it wishes the pipeline services to cease to be light regulation services and provides for a process that the NCC must follow upon receiving that advice. Also provides that a light regulation determination is revoked on the same day that an access arrangement that applies to the relevant pipeline is approved or made.

Subdivision 2—On application by persons other than service providers

118—Application (other than by service provider) for revocation of light regulation determinations

Provides that a person other than the service provider who provides light regulation services may apply in accordance with the National Gas Rules to the NCC for the revocation of a light regulation determination.

119—Decisions on applications made around time of applications for coverage revocation determinations

Provides that the NCC must make a decision in relation to an application to revoke a light regulation determination and a decision in relation to an application for a coverage revocation determination received around the same time as the first application, at the same time and within the same time period and in accordance with this Law and the National Gas Rules.

120—NCC decision on application where no application for a coverage revocation recommendation

Provides that the NCC must make a decision in relation to an application to revoke a light regulation determination, where no application has been made to it in relation to a coverage revocation recommendation within a certain period of time and in accordance with this Law and the National Gas Rules.

121—Operation and effect of decision of NCC under this Division

Provides that a service provider must submit a full access arrangement on the making of a decision by the NCC to revoke a light regulation determination, and that the light regulation revocation determination does not take effect until the relevant access arrangement is approved or made under a full access arrangement decision.

Division 3—Principles governing light regulation determinations

122—Principles governing the making or revoking of light regulation determinations

Provides that in deciding whether to make a light regulation determination or to revoke a light regulation determination, the NCC must consider:

- the likely effectiveness of the forms of regulation provided for under this Law and the National Gas Rules in promoting access to pipeline services; and
- the effect of those forms of regulation on the likely costs that may be incurred by an efficient service provider, efficient users and prospective users and end users.

In considering these matters, the NCC must have regard to the national gas objective, the form of regulation factors and any other matters it considers relevant.

Division 4—Revocation if coverage determination not made

123—Light regulation determination revoked if coverage determination not made

Provides that a light regulation determination is revoked at the same time as the relevant Minister makes a decision not to make a coverage determination in relation to the relevant pipeline.

Division 5—Effect of pipeline ceasing to be covered pipeline

124—Light regulation services cease to be such services on cessation of coverage of pipeline

Provides that a light regulation determination is revoked on the same day as a coverage revocation determination takes effect.

Division 6—AER reviews into designated pipelines

125—AER reviews

Provides that the MCE or the service provider may request the AER to conduct a review into and report to the MCE as to whether a pipeline should continue to be a designated pipeline and, in conducting a review, the AER must have regard to the national gas objective and whether there has been a material change in competition in a market served by the designated pipeline and must undertake public consultation on the matter. Also provides that the AER must, after completion of the review, prepare a report, give it to the AER and the service provider and publish the report on its website.

Part 3—Coverage of pipelines the subject of tender process

126—Tender approval pipelines deemed to be covered pipelines

Provides that a pipeline is deemed to be a covered pipeline on and from the date that the tender approval decision becomes irrevocable and ceases to be a covered pipeline on the expiry of an applicable access arrangement (if one applies to the pipeline) or when a coverage revocation determination takes effect.

Part 4—Coverage following approval of voluntary access arrangement

127—Certain pipelines become covered pipelines on approval of voluntary access arrangement

Provides that a pipeline the subject of a full access arrangement voluntarily submitted by a service provider to the AER for approval is deemed to be a covered pipeline on the day that access arrangement takes effect as an applicable access arrangement and ceases to be a covered pipeline if the applicable access arrangement expires or when a coverage revocation determination takes effect.

Part 5—Reclassification of pipelines

128—Service provider may apply for reclassification of pipeline

Provides that a service provider may apply to the NCC for reclassification of a pipeline.

129—Reclassification decision

Provides that the NCC must make a reclassification decision within a certain time period and in accordance with this Law and the National Gas Rules. In making a reclassification decision, the NCC must have regard to the national gas objective and the pipeline classification criterion and must as part of the reclassification decision, determine whether the pipeline is a cross boundary transmission or distribution pipeline.

130—Effect of reclassification decision

Provides that the pipeline is reclassified in accordance with the decision of the NCC and that the relevant Minister is the relevant Minister as provided under this Law.

Chapter 4—General requirements for provision of covered pipeline services

Part 1—General duties for provision of pipeline services by covered pipelines

131—Service provider must be legal entity of a specified kind to provide pipeline services by covered pipeline

Provides that a covered pipeline service provider must be constituted as a legal entity of a kind specified in this section in order to provide pipeline services by means of a covered pipeline.

132—Submission of full access arrangement or revisions to applicable full access arrangements

Provides that a covered pipeline service provider must submit in accordance with the National Gas Rules a full access arrangement or revisions to that access arrangement to the AER for approval unless the pipeline services are or are intended to be light regulation services.

133—Preventing or hindering access

Provides that various person or entities must not engage in conduct for the purpose of preventing or hindering the access of another person to a pipeline service. The section details further the meaning of the term 'purpose' and 'conduct' within the context of the prohibition.

134—Supply and haulage of natural gas

Provides that if a producer offers to supply natural gas on certain terms and conditions at a place other than the exit flange ('the first terms') , the producer must also, on request, state terms and conditions (including price if that was included in the first terms) for supply of natural gas at the exit flange ('the second terms') with reasons if there is a price differential between the first and second terms. Also obliges the producer to supply natural at the exist flange on the terms and conditions stated if an offer has been made by the producer to offer to supply natural gas at a place other than the exit flange.

135—Covered pipeline service provider must comply with queuing requirements

Provides that a covered pipeline service provider must comply with the queuing requirements of an applicable access arrangement.

136—Covered pipeline service provider providing light regulation services must not price discriminate

Provides that a covered pipeline service provider must not discriminate in relation to price when providing light regulation services unless that price discrimination is conducive to efficient service provision.

Part 2—Structural and operational separation requirements (ring fencing)

Division 1—Interpretation

137—Definitions

Provides for definitions specific to this Part.

138—Meaning of marketing staff

Provides for a definition of 'marketing staff'.

Division 2—Minimum ring fencing requirements

139—Carrying on of related businesses prohibited

Provides that on and after the compliance date, as defined, a covered pipeline service provider must not carry on a related business.

140—Marketing staff and the taking part in related businesses

Provides that on and after the compliance date, as defined, that marketing staff must not take certain roles in related businesses.

141—Accounts that must be prepared, maintained and kept

Provides that on and after the compliance date, as defined, a covered pipeline service provider must prepare, maintain and keep separate accounts for pipeline services provided by each covered pipeline and a consolidated set of accounts for the whole of the business of the covered pipeline service provider.

Division 3—Additional ring fencing requirements

142—Division does not limit operation of Division 2

Provides that this Division does not limit Division 2.

143—AER ring fencing determinations

Provides that the AER, in accordance with this Division and the National Gas Rules, may make a determination requiring a covered pipeline service provider to comply with an additional ring fencing requirement. The provision also specifies that the AER, when making a determination in relation to an additional ring fencing requirement, must have regard to various principles.

144—AER to have regard to likely compliance costs of additional ring fencing requirements

Provides that the AER, when making an additional ring fencing requirement, must have regard to the likely costs the may be incurred by an efficient covered pipeline service provider or and efficient associate of covered pipeline service provider.

145—Types of ring fencing requirements that may be specified in an AER ring fencing determination

Provides for, without limitation, particular types of additional ring fencing requirements that the AER may require of a covered pipeline service provider in a determination.

Division 4—AER ring fencing exemptions

146—Exemptions from minimum ring fencing requirements

Provides that a covered pipeline service provider may apply to the AER, in accordance with the National Gas Rules, for a exemption from the requirements of sections 139, 140 or 141 and empowers the AER to grant that exemption in accordance with the National Gas Rules.

Division 5—Associate contracts

147—Service provider must not enter into or give effect to associate contracts that have anti competitive effect

Provides that a covered pipeline service provider must not enter into or vary an associate contract or give effect to a provision of an associate contract that has the purpose of would have or be likely to have the effect of substantially lessening competition in a market for natural gas services, unless that associated contract is approved or the provision is contained in an approved associate contract.

148—Service provider must not enter into or give effect to associate contracts inconsistent with competitive parity rule

Provides that a service provider must not enter into or vary an associate contract or give effect to a provision of an associate contract that is inconsistent with the competitive parity rule, unless that associated contract is approved or the provision is contained in an approved associate contract.

Chapter 5—Greenfields pipeline incentives

Part 1—Interpretation

149—Definitions

Defines terms used in this Chapter.

150—International pipeline to be a transmission pipeline for purposes of Chapter

An international pipeline is, for the purposes of this Chapter, a transmission pipeline.

Part 2—15 year no coverage determinations

151—Application for 15 year no coverage determination for proposed pipeline

Allows a service provider to apply to the National Competition Council for a binding no coverage determination exempting the pipeline from coverage.

152—Application to be dealt with in accordance with the Rules

Provides that an application must be dealt with in accordance with the rules.

153—No coverage recommendation

Provides that the NCC may make no-coverage recommendations.

154—Principles governing the making of a no coverage recommendation

Provides that the NCC is required to give effect to the pipeline coverage criteria. In deciding whether or not those criteria are satisfied, the NCC is required to have regard to relevant submissions and comments made within the time allowed for submissions and comments. If the NCC is satisfied that all the pipeline coverage criteria are satisfied in relation to the pipeline, the NCC must recommend against making a binding no coverage determination. If the NCC is not satisfied that all the criteria are satisfied, the recommendation must be in favour of making a determination.

155—Initial classification decision to be made as part of recommendation

Requires the NCC to classify the pipeline as part of its recommendation.

156—Relevant Minister's determination on application

Requires the relevant Minister to decide whether or not to make a binding no coverage determination within 30 days of receiving the NCC's recommendation. In making his or her decision, the relevant Minister must give effect to the pipeline coverage criteria.

157—Principles governing the making of a 15 year no coverage determination or decision not to do so

In deciding whether or not the pipeline coverage criteria are satisfied in relation to the pipeline, the Minister must have regard to the national gas objective and the NCC's recommendation. He or she may take into account any relevant submissions and comments made to the NCC. If the Minister is satisfied that all the pipeline coverage criteria are satisfied in relation to the pipeline, the Minister must not make a binding no coverage determination. If the Minister is not satisfied that all the pipeline coverage criteria are satisfied in relation to the pipeline, the Minister must make a binding no coverage determination. A binding no coverage determination, or a decision not to make a binding no coverage determination, must be in writing and must contain a short description of the pipeline the subject of the determination, accompanied by a reference to a website at which the relevant pipeline description can be inspected.

158—Effect of 15 year no coverage determination

Provides that a binding no coverage determination takes effect when it is made and remains in force for a period of 15 years from the commissioning of the pipeline. An application for coverage of a pipeline to which a binding no coverage determination applies can only be made before the end of the period for which the determination remains in force if the coverage sought in the application is to commence from, or after, the end of that period.

159—Consequences of Minister deciding against making 15 year no coverage determination for international pipeline

If the Commonwealth Minister decides against making a binding no coverage determination for an international pipeline, and the applicant asks the Commonwealth Minister to treat the application as an application for a price regulation exemption, the Minister may treat the application as an application for a price regulation exemption. The Commonwealth Minister may then refer the application back to the NCC for a recommendation or proceed to determine the application without a further recommendation.

Part 3—Price regulation exemptions

Division 1—Application for price regulation exemption

160—Application for price regulation exemption

Provides that if a greenfields pipeline project for construction of an international pipeline is proposed, or has commenced, the service provider may apply for a price regulation exemption for the pipeline.

Division 2—Recommendations by NCC

161—Application to be dealt with in accordance with the Rules

Requires applications to be dealt with in accordance with the rules.

162—NCC's recommendation

Requires the NCC to make a recommendation to the Commonwealth Minister.

163—General principle governing NCC's recommendation

Requires the NCC to weigh the benefits to the public of granting the exemption against the detriments to the public. The NCC is required to have regard to the national gas objective and other relevant matters.

Division 3—Making and effect of price regulation exemption

164—Making of price regulation exemption

Requires the Commonwealth Minister to decide whether or not to make a price regulation exemption following receipt of the NCC's recommendation.

165—Principles governing the making of a price regulation exemption

Requires the Commonwealth Minister to weigh the benefits to the public, of granting the exemption against the detriments to the public and to have regard to the national gas objective and other relevant matters.

166—Conditions applying to a price regulation exemption

Requires service providers to publish certain information and provide information to the AER or Commonwealth Minister.

167—Effect of price regulation exemption

Describes the effect of a price regulation exemption.

Division 4—Limited access arrangements

168—Limited access arrangements for pipeline services provided by international pipeline to which a price regulation exemption applies

Requires holders of price regulation exemptions to submit limited access arrangements.

Division 5—Other matters

169—Other obligations to which service provider is subject

Lists some provisions to which the service provider for a pipeline to which a price regulation exemption applies is subject.

170—Service provider must not price discriminate in providing international pipeline services

Prohibits a service provider from engaging in price discrimination.

Part 4—Extended or modified application of greenfields pipeline incentive

171—Requirement for conformity between pipeline description and pipeline as constructed

Provides that a greenfields pipeline incentive applies to the pipeline as described in the relevant pipeline description. If the pipeline, as constructed, differs from the pipeline as described in the pipeline description, the incentive does not attach to the pipeline and the service provider is not entitled to its benefit.

172—Power of relevant Minister to amend pipeline description

Allows the relevant Minister, on application by the service provider, to amend the relevant pipeline description.

Part 5—Early termination of greenfields pipeline incentive

173—Greenfields pipeline incentive may lapse

Provides that a greenfields pipeline incentive lapses if the pipeline for which it was granted is not commissioned within 3 years after the incentive was granted.

174—Revocation by consent

The relevant Minister may, at the request of the service provider, revoke a greenfields pipeline incentive.

175—Revocation for misrepresentation

Allows the relevant Minister to revoke a greenfields pipeline incentive on application by the AER, on the grounds that the applicant misrepresented a material fact or failed to disclose material information.

176—Revocation for breach of condition to which a price regulation exemption is subject

Allows the relevant Minister to revoke a greenfields pipeline incentive on application by the AER, on the grounds that the applicant has breached a condition to which the price regulation is subject.

177—Exhaustive provision for termination of greenfields pipeline incentive

Provides that a greenfields pipeline incentive does not terminate, and cannot be revoked, before the end of its term except as provided in this Part.

Chapter 6—Access disputes

Part 1—Interpretation and application

178—Definitions

Defines terms used in this Chapter.

179—Chapter does not limit how disputes about access may be raised or dealt with

Provides that this Chapter does not limit how parties may resolve access disputes.

180—No price or revenue regulation for access disputes relating to international pipeline services

Prohibits the resolution of a dispute about a pipeline service, subject to an international price regulation exemption by imposing price or revenue regulation.

Part 2—Notification of access dispute

181—Notification of access dispute

Allows users, prospective users or service providers to notify the AER of an access dispute.

182—Withdrawal of notification

Allows a party to withdraw a notification.

183—Parties to an access dispute

Lists the parties to an access dispute.

Part 3—Access determinations

184—Determination of access dispute

Requires the AER to make determinations on access.

185—Dispute resolution body may require parties to mediate, conciliate or engage in an alternative dispute resolution process

Allows the AER to require parties to engage in alternative dispute resolution.

186—Dispute resolution body may terminate access dispute in certain cases

Allows the AER to terminate a dispute if it considers that; the notification was vexatious, the subject matter of the dispute is trivial, misconceived or lacking in substance, the party who notified the dispute did not negotiate in good faith or a specific termination circumstances has occurred.

187—No access determination if dispute resolution body considers there is genuine competition

The AER may refuse to make a determination if it considers that the pipeline service could be provided on a genuinely competitive basis.

188—Restrictions on access determinations

Prevents the AER from making a determination that affects existing contractual rights or rights under earlier access determinations.

189—Access determination must give effect to applicable access arrangement

Requires the AER to apply an applicable access arrangement when making an access determination.

190—Access determinations and past contributions of capital to fund installations or the construction of new facilities

Allows the AER to consider past contributions of capital by users.

191—Rules may allow determination that varies applicable access arrangement for installation of a new facility

Allows the AEMC to make Rules concerning alteration of access arrangements when access determinations require the construction of a new facility.

192—Access determinations need not require the provision of a pipeline service

Enables the AER to make an access determination that does not grant access to a pipeline service.

193—Content of access determinations

Specifies the content of an access determination.

Part 4—Variation of access determinations

194—Variation of access determination

Allows the AER to vary an access determination at the request of a party to the determination if no other parties object.

Part 5—Compliance with access determinations

195—Compliance with access determination

Requires parties to an access determination to comply with the determination.

Part 6—Access dispute hearing procedure

196—Hearing to be in private

Access Dispute hearings are to be conducted in private unless the parties agree.

197—Right to representation

Allows other people to appear as representatives of the parties to the dispute.

198—Procedure of dispute resolution body

Establishes the procedure for the AER in an access dispute.

199—Particular powers of dispute resolution body in a hearing

Gives the AER powers to assist it conduct hearings.

200—Disclosure of information

Allows the AER to authorise disclosure of information as part of a hearing.

201—Power to take evidence on oath or affirmation

Empowers the AER to take evidence under oath.

202—Failing to attend as a witness

Imposes a penalty of $2,000 for failure of a witness to attend.

203—Failing to answer questions etc

Imposes a penalty of $2,000 for witnesses who fail to answer questions.

204—Intimidation etc

Creates a penalty of $2,000 for intimidating witnesses.

205—Party may request dispute resolution body to treat material as confidential

Allows a party to request that information be treated as confidential and allows the AER to decide to treat the information as confidential.

206—Costs

Creates a presumption that parties will pay their own costs but allows the AER to award costs under some circumstances.

207—Outstanding costs are a debt due to party awarded the costs

Allows parties to recover unpaid costs in court.

Part 7—Joint access dispute hearings

208—Definition

Defines terms used in this Part.

209—Joint dispute hearing

Allows the AER to conduct joint dispute hearings.

210—Consulting the parties

Requires the AER to consult with the parties before deciding to hold a joint dispute hearing.

211—Constitution and procedure of dispute resolution body for joint dispute hearings

Applies Chapter 6 Part 6 to joint dispute hearings.

212—Record of proceedings etc

Allows the AER to have regard to records of proceedings.

Part 8—Miscellaneous matters

213—Correction of access determinations for clerical mistakes etc

Allows correction of minor clerical errors in a determination.

214—Reservation of capacity during an access dispute

Prohibits a service provider from altering a users access rights during the period of a dispute.

215—Subsequent service providers bound by access determinations

Applies the result of an access dispute to subsequent service providers.

216—Regulations about the costs to be paid by parties to access dispute

Allows the regulations to specify charges for access disputes.

Chapter 7—The Natural Gas Services Bulletin Board

Part 1—The Bulletin Board Operator

217—The Bulletin Board operator

Allows the Bulletin Board operator to be prescribed by regulation.

218—Obligation to establish and maintain the Natural Gas Services Bulletin Board

Requires the Bulletin Board operator to establish and maintain a Bulletin Board.

219—Other functions of the Bulletin Board operator

Gives the Bulletin Board operator additional functions to assist them operate the Bulletin Board.

220—Powers of the Bulletin Board operator

Allows the Bulletin Board operator to do all things necessary and convenient for the performance of its functions.

221—Immunity of the Bulletin Board operator

Protects the Bulletin Board operator and its staff from liability while performing their functions under this Law.

222—Fees for services provided

Allows the Rules to specify fees for access to the Bulletin Board.

Part 2—Bulletin Board information

223—Obligation to give information to the Bulletin Board operator

Lists classes of people who the Rules may require to provide information to the Bulletin Board operator.

224—Person cannot rely on duty of confidence to avoid compliance with obligation

Prevents people relying on duties of confidence to avoid providing information to the Bulletin Board operator.

225—Giving to Bulletin Board operator false and misleading information

Prohibits providing false or misleading information to the Bulletin Board operator.

226—Immunity of persons giving information to the Bulletin Board operator

Protects people providing information to the Bulletin Board operator from civil monetary liability.

Part 3—Protection of information

227—Protection of information by the Bulletin Board operator

Requires the Bulletin Board operator to only use information given to it in ways permitted by the Law or Rules.

228—Protection of information by employees etc of the Bulletin Board operator

Prohibits employees of the Bulletin Board operator and other persons performing work for the Bulletin Board operator, from using information given to them for anything other than uses allowed by the Law or Rules.

Chapter 8—Proceedings under the National Gas Law

Part 1—General

229—Instituting civil proceedings under this Law

Provides that proceedings for breach of the NGL, Regulations or Rules may not be instituted except as provided in this Part.

230—Time limit within which proceedings may be instituted

Provides for the time limit within which proceedings may be instituted.

Part 2—Proceedings by the AER in respect of this Law, Regulations or the Rules

231—AER proceedings for breaches of a provision of this Law, Regulations or the Rules that are not offences

Provides for the orders that may be made in proceedings in respect of breaches of provisions of the NGL, Regulations or Rules that are not offence provisions.

232—Proceedings for declaration that a person is in breach of a conduct provision

Allows a person other than the AER to apply to a court for a declaration that a person is in breach of a conduct provision.

233—Actions for damages by persons for breach of conduct provision

Allows recovery of damages by people who suffer loss as a result of a breach of a conduct provision.

Part 3—Matters relating to breaches of this Law, the Regulations or the Rules

234—Matters for which there must be regard in determining amount of civil penalty

Sets out matters to be taken into account in determining civil penalties.

235—Breach of a civil penalty provision is not an offence

Provides that a breach of a civil penalty provision (as defined in clause 58) is not an offence.

236—Breaches of civil penalty provisions involving continuing failure

Provides for breaches of civil penalty provisions involving continuing failure.

237—Conduct in breach of more than 1 civil penalty provision

Provides for liability for one civil penalty in respect of the same conduct constituting a breach of two or more civil penalty provisions.

238—Persons involved in breach of civil penalty provision

Provides for aiding, abetting, counselling, procuring or being knowingly concerned in or party to a breach of a civil penalty provision.

239—Attempt to breach a civil penalty provision

Provides that an attempted breach of a civil penalty provision is deemed to be a breach of that provision.

240—Civil penalties payable to the Commonwealth

Provides that civil penalties are payable to the Commonwealth.

Part 4—Judicial review of decisions under this Law, the Regulations and the Rules

241—Definition

Defines terms used in this Part.

242—Applications for judicial review of decisions of the AEMC

Provides that aggrieved persons (as defined) may apply for judicial review in respect of AEMC decisions and determinations; the operation of a decision or determination is not affected by an application for judicial review, unless the Court otherwise orders.

243—Applications for judicial review of decisions of the Bulletin Board operator

Provides that aggrieved persons (as defined) may apply for judicial review in respect of Bulletin Board Operator decisions and determinations; the operation of a decision or determination is not affected by an application for judicial review, unless the Court otherwise orders.

Part 5—Merits review and other non judicial review

Division 1—Interpretation

244—Definitions

Defines terms used in this Part.

Division 2—Merits review for reviewable regulatory decisions

245—Applications for review

Allows affected or interested persons to apply for review or a reviewable regulatory decision.

246—Grounds for review

Allows review if the original decision maker made an error in finding of fact that was material to the decision or their decision was incorrect or unreasonable.

247—By when an application must be made

Requires applications for review to be made within 15 business days.

248—Tribunal must not grant leave unless serious issue to be heard and determined

The Tribunal may only hear matters if it is convinced that there is a serious issue to be heard.

249—Leave must be refused if application is about an error relating to revenue amounts below specified threshold

Leave for review of some decisions must be refused if the amount in dispute is smaller than the lesser of five million dollars or two percent of average annual regulated revenue.

250—Tribunal must refuse to grant leave if submission not made or is made late

The Tribunal must refuse leave to an applicant other than a service provider if the applicant failed to make submissions to the original decision maker or made a late submission.

251—Tribunal may refuse to grant leave to service provider in certain cases

Allows the Tribunal to refuse leave for a review to a service provider if they; failed to comply with a request of the original decision maker, delayed the making of the original decision or misled the original decision maker.

252—Effect of application on operation of reviewable regulatory decisions

Provides that an application for review stays the operation of all reviewable regulatory decisions accept access arrangement decisions and associate contract decisions.

253—Intervention by others in a review without leave

Allows the service provider to whom a reviewable regulatory decision applies and Minister's of participating jurisdictions to intervene in a review without the leave of the Tribunal.

254—Leave for reviewable regulatory decision process participants

Allows other parties to intervene in a review with the leave of the Tribunal.

255—Leave for user or consumer intervener

Allows user or consumer groups to intervene in a review with the leave of the Tribunal.

256—Interveners may raise new grounds for review

Allows interveners to raise new grounds of review.

257—Parties to a review under this Division

Lists the parties to a review.

258—Matters that parties to a review may and may not raise in a review

Lists matters that may and may not be raised in a review by the parties to a review.

259—Tribunal must make determination

Requires the Tribunal to make a decision and allows them to affirm, set aside or vary the original decision or remit the decision to the original decision maker.

260—Target time limit for Tribunal for making a determination under this Division

Provides a target time limit of 3 months for the Tribunal to make decisions.

261—Matters to be considered by Tribunal in making determination

Lists material that may be considered by the Tribunal.

262—Assistance from NCC in certain cases

Allows the Tribunal to seek assistance from the NCC when reviewing ministerial coverage decisions.

Division 3—Tribunal review of AER information disclosure decisions under section 329

263—Application for review

Allows applications for review of AER information disclosure decisions.

264—Exclusion of public in certain cases

Allows the review to be conducted in private.

265—Determination in the review

Allows the Tribunal to affirm the AER's decision or forbid or restrict disclosure of the information.

266—Tribunal must be taken to have affirmed decision if decision not made within time

Deems the Tribunal to have affirmed the AER's decision if it does not make a decision within 20 business days.

267—Assistance from the AER in certain cases

Allows the AER to request assistance from the AER in certain circumstances.

Division 4—General

268—Costs in a review

Specifies how the AER may award costs.

269—Amount of costs

Allows the Tribunal to determine how the amount of costs will be calculated.

270—Review of Part

Requires the MCE to review this Part within 7 years after its commencement.

Part 6—Enforcement of access determinations

271—Enforcement of access determinations

Allows parties to an access determination to apply to a court to enforce the determination.

272—Consent injunctions

Allows the court to grant consent injunctions.

273—Interim injunctions

Allows the court to grant interim injunctions.

274—Factors relevant to granting a restraining injunction

Lists factors to be considered by the court when granting restraining injunctions.

275—Factors relevant to granting a mandatory injunction

Lists factors to be considered by the court when granting mandatory injunctions.

276—Discharge or variation of injunction or other order

Allows the court to discharge or vary injunctions.

Part 7—Infringement notices

277—Power to serve a notice

Provides that the AER may serve infringement notices for breaches of relevant civil penalty provisions.

278—Form of notice

Provides for the form of the infringement notice.

279—Infringement penalty

Sets out the amount of the infringement penalty: $4 000, or such lesser amount as is prescribed in the Regulations, for a natural person; or $20 000, or such lesser amount as is prescribed in the Regulations, for a body corporate.

280—AER cannot institute proceedings while infringement notice on foot

Provides that the AER must not, without first withdrawing the infringement notice, institute proceedings for a breach until the period for payment under the infringement notice expires.

281—Late payment of penalty

Provides for when the AER may accept late payment of an infringement penalty.

282—Withdrawal of notice

Provides that the AER may withdraw an infringement notice.

283—Refund of infringement penalty

Provides for refund of an infringement penalty if the infringement notice is withdrawn.

284—Payment expiates breach of civil penalty provision

Provides for expiation of a breach subject to an infringement notice.

285—Payment not to have certain consequences

Provides that payment of an infringement penalty is not to be taken to be an admission of a breach or of liability.

286—Conduct in breach of more than 1 civil penalty provision

Provides for payment of one infringement penalty in respect of the same conduct constituting a breach of two or more civil penalty provisions for which two or more infringement notices have been served.

Part 8—Further provision for corporate liability for breaches of this Law etc

287—Definition

Defines terms used in this Part.

288—Offences and breaches by corporations

Provides that an officer (as defined) of a corporation is also liable for a breach of an offence provision or civil penalty provision by the corporation if the officer knowingly authorised or permitted the breach.

289—Corporations also in breach if officers and employees are in breach

Provides that an act committed by an officer (as defined) or employee of a relevant participant (as defined) will be a breach where the act, if committed by the relevant participant, would be a breach.

Chapter 9—The making of the National Gas Rules

Part 1—General

Division 1—Interpretation

290—Definitions

Sets out definitions for the purposes of this Part.

Division 2—Rule making tests

291—Application of national gas objective

Requires the AEMC to make rules that contribute towards achieving the National Gas Objective.

292—AEMC must take into account form of regulation factors in certain cases

Requires the AEMC to consider the form of regulation factors when making a rule that specifies reference services or allows the AER to determine reference services.

293—AEMC must take into account revenue and pricing principles in certain cases

The AEMC must take the revenue and pricing principles into account when specifying regulatory economic methodologies.

Part 2—Initial National Gas Rules

294—South Australian Minister to make initial National Gas Rules

Provides for the South Australian Minister to make the initial Rules. A notice of making must be published in the South Australian Government Gazette and the Rules must be made publicly available.

Part 3—Procedure for the making of a Rule by the AEMC

295—Initiation of making of a Rule

Provides for who may request the making of a Rule and also provides that the AEMC must not make a Rule on its own initiative except in certain circumstances.

296—AEMC may make more preferable Rule in certain cases

The AEMC will be able to make a Rule that is different from a market initiated Rule if the AEMC is satisfied that its proposed rule will or is more likely to better contribute to the achievement of the national electricity objective.

297—AEMC may make Rules that are consequential to a Rule request

Allows the AEMC to make Rules that are consequential to a rule change request.

298—Content of requests for a Rule

Sets out what a request for the making of a Rule must contain.

299—Waiver of fee for Rule requests

Allows the AEMC to waive a fee for a rule request.

300—Consolidation of 2 or more Rule requests

The powers of the AEMC to consolidate requests for Rules are to be clarified. The processes surrounding the consideration of a request for a Rule are to be revised to some extent.

301—Initial consideration of request for Rule

Provides for initial consideration by the AEMC of a request for a Rule.

302—AEMC may request further information from Rule proponent in certain cases

The AEMC will be given express power to request additional information from a person who requests the making of a Rule.

303—Notice of proposed Rule

If the AEMC decides to act on a request for a rule to be made, or forms an intention to make an AEMC initiated rule, the AEMC will publish notice of the request or intention and a draft of the proposed Rule.

304—Publication of non controversial or urgent final Rule determination

Provides for the publication of non controversial and urgent Rules.

305—'Fast track' Rules where previous public consultation by gas market regulatory body or an AEMC review

Certain requests for Rules will be able to be dealt with expeditiously.

306—Right to make written submissions and comments

Provides for the making of written submissions on a proposed Rule.

307—AEMC may hold public hearings before draft Rule determination

Provides for the holding of a hearing in relation to a proposed Rule.

308—Draft Rule determination

Requires the AEMC to publish its draft determination, including reasons, in relation to a proposed Rule.

309—Right to make written submissions and comments in relation to draft Rule determination

Provides for written submissions on a draft Rule determination.

310—Pre final Rule determination hearing may be held

Provides for holding of a pre final determination in relation to a draft Rule determination.

311—Final Rule determination as to whether to make a Rule

Requires the AEMC to publish its final Rule determination, including reasons.

312—Further draft Rule determination may be made where proposed Rule is a proposed more preferable Rule

The AEMC may take action to consult, receive submissions and conduct hearings in relation to a more preferable Rule.

313—Making of Rule

Requires the AEMC to make a Rule as soon as practicable after publication of its final Rule determination. Notice of the making of a Rule must be published in the South Australian Government Gazette.

314—Operation and commencement of Rule

Provides that a Rule comes into operation on the day the notice of making is published or on such later date as is specified in that notice or the Rule.

315—Rule that is made to be published on website and made available to the public

Requires the AEMC, without delay after making a Rule, to publish the Rule on its website and make a copy available for inspection at its offices.

316—Evidence of the National Gas Rules

Is an evidentiary provision relating to the Rules.

Part 4—Miscellaneous provisions relating to rule making by the AEMC

317—Extension of periods of time in Rule making procedure

Provides a general power for the AEMC to extend periods of time in the Rule making procedure.

318—AEMC may extend period of time for making of final Rule determination for further consultation

Allows the AEMC to extend periods of time for consultation as a result of comments received during consultation.

319—AEMC may publish written submissions and comments unless confidential

Allows the AEMC to publish submissions unless they are confidential.

320—AEMC must publicly report on Rules not made within 12 months of public notification of requests

Requires the AEMC to publicly report if it fails to make a Rule within 12 months of receiving a request.

Chapter 10—General

Part 1—Provisions relating to applicable access arrangements

321—Protection of certain pre existing contractual rights

Prevents access arrangement decisions from depriving parties of protected contractual rights.

322—Service provider may enter into agreement for access different from applicable access arrangement

Allows a service provider to enter into agreement for access different from applicable access arrangement.

323—Applicable access arrangements continue to apply regardless of who provides pipeline service

Applies an access arrangement to whichever service provider provides the service.

Part 2—Handling of confidential information

Division 1—Disclosure of confidential information held by AER

324—Authorised disclosure of information given to the AER in confidence

Allows the AER to disclose information in some circumstances.

325—Disclosure with prior written consent is authorised

Allows the AER to disclose information with the consent of the person who provided it.

326—Disclosure for purposes of court and tribunal proceedings and to accord natural justice

Allows the AER to disclose information if it is required to for a court or tribunal proceedings.

327—Disclosure of information given to the AER with confidential information omitted

Allows the AER to omit confidential information before disclosing a document.

328—Disclosure of information given in confidence does not identify anyone

Allows the AER to disclose de identified information.

329—Disclosure of confidential information authorised if detriment does not outweigh public benefit

Allows the AER to disclose information if the detriment does not outweigh the public benefit.

Division 2—Disclosure of confidential information held by relevant Ministers, NCC and AEMC

330—Definitions

Defines terms used in this division.

331—Confidentiality of information received for scheme procedure purpose and for making of scheme decision

Allows the disclosure of confidential information to other scheme decision makers or the MCE as well as it is identified as confidential.

Part 3—Miscellaneous

332—Failure to make a decision under this Law or the Rules within time does not invalidate the decision

Provides that a failure to make a decision in time does not invalidate the decision.

333—Withdrawal of applications relating to coverage or reclassification

Allows applications for decisions to be withdrawn.

334—Notification of Ministers of participating jurisdictions of receipt of application

Requires the NCC to notify Minister's of participating jurisdictions of applications for ministerial decisions.

335—Relevant Minister may request NCC to give information or assistance

Allows the relevant Minister to request assistance from the NCC when making a decision.

336—Savings and transitionals

Schedule 3 has effect under the Law.

Schedule 1—Subject matter for the National Gas Rules

Specifies matters about which the AEMC may make Rules.

Schedule 2—Miscellaneous provisions relating to interpretation

Contains interpretation provisions that will apply to the NGL, Regulations and Rules.

Schedule 3—Savings and transitionals

Sets out savings and transitional provisions.

Debate adjourned on motion of Mr Griffiths.

STATUTES AMENDMENT (TRANSPORT PORTFOLIO) BILL

The Hon. P.F. CONLON (Elder—Minister for Transport, Minister for Infrastructure, Minister for Energy) (12:02): Obtained leave and introduced a bill for an act to amend the Harbors and Navigation Act 1993, the Motor Vehicles Act 1959, the Passenger Transport Act 1994 and the Road Traffic Act 1961. Read a first time.

The Hon. P.F. CONLON (Elder—Minister for Transport, Minister for Infrastructure, Minister for Energy) (12:02): I move:

That this bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

The Statutes Amendment (Transport Portfolio) Bill 2008 includes a number of transport related amendments to the Motor Vehicles Act 1959, Road Traffic Act 1961, Passenger Transport Act 1994 and the Harbors and Navigation Act 1993, most of which are minor in nature and aim to improve the operation and administration of the respective pieces of legislation.

Of most significance, the Bill aims to improve the management of unregistered and/or uninsured vehicles by making the offences of driving or leaving standing on a road an unregistered and/or uninsured vehicle expiable. South Australia is the only State where these offences are not expiable. The Bill also aims to improve compliance by increasing the perceived risk of detection by making both offences detectable by camera.

At present, the maximum penalty for driving an unregistered vehicle is $750 or twice the amount of the prescribed registration fee for 12 months, whichever is higher. Driving uninsured attracts a maximum penalty of up to $2,500 and disqualification from holding or obtaining a driver's licence for up to 12 months. The offence of driving uninsured attracts a higher penalty as it constitutes a derogation of fiscal responsibility for personal injury in the event of an accident.

The average fine imposed by the courts has tended to be low in relation to the maximum penalty–around $240 for driving an unregistered vehicle and around $300 for driving an unregistered and uninsured vehicle. In addition, an average driver's licence disqualification of 2 days (usually of the driver's choice) is imposed for uninsured offences in most circumstances.

The number of people who drive an unregistered and/or uninsured vehicle is increasing. In 2000-01, there were 14,517 unregistered and/or uninsured charges before the courts and in 2005-06, that number had increased to over 19,000. The total number of unregistered and/or uninsured vehicles being used on the road network is likely to be much higher.

As the total fee to 'register' a vehicle includes a registration charge, a premium for the compulsory third party insurance, stamp duty on the issue of the insurance cover, an Emergency Services Levy and an administration fee, each unregistered vehicle driven on a road results in higher premiums for people who register their vehicle, as well as loss of revenue to the Government.

The Department for Transport, Energy and Infrastructure has been working with the Motor Accident Commission, South Australia Police, the Attorney-General's Department and the Courts Administration Authority for some time to address the issue in a comprehensive way.

To ensure that those who drive an unregistered and/or uninsured vehicle on our roads are held accountable for their actions, the Bill increases the penalty for driving or leaving standing on a road an unregistered vehicle from $750 to $2,500, with an expiation fee of $250 to be prescribed by the Motor Vehicles Regulations 1996. Similarly, the Bill increases the penalty for driving or leaving standing on a road an uninsured vehicle from $2,500 to $5,000, with an expiation fee of $500 to be prescribed by the regulations. A person whose vehicle is detected on a road without registration and insurance will be liable to the penalty for both offences. The increases in penalties are designed to counteract the perceived financial benefit of not paying the registration and insurance fees, allows the courts to impose penalties that equate to the amount of registration and insurance avoided, and reflects the seriousness of these offences.

Issuing an expiation notice also provides an immediate penalty, and this, together with the sufficiently high expiation fees, will act as a more effective deterrent.

While it might be thought that making unregistered and/or uninsured offences expiable will reduce the time and resources required by the courts, the Courts Administration Authority has advised that unregistered and/or uninsured offences are not usually heard alone but generally form part of a larger group of offences being heard together. The Courts Administration Authority has confirmed that there would be limited savings in court time as a result of making the offences expiable.

To reinforce the serious nature of these offences and to respond to repeat offenders, the Bill ensures that those who have been detected on a number of occasions driving an unregistered and/or uninsured vehicle, as well as those subject to a Cessation of Business order imposed by the Courts Administration Authority as a result of unpaid fines, may continue to be dealt with by the courts, rather than by expiation.

As a licence disqualification is more appropriately associated with offences related to licensing matters, the Bill removes the licence disqualification penalty for the offence of driving an uninsured vehicle. South Australia is the only State to apply a licence disqualification for the offence.

In addition, the Bill will enable all road traffic cameras such as speed, red light and Safe-T-Cam cameras (currently used to detect heavy vehicle driving hours offences) to be used to detect and enforce unregistered and/or uninsured offences. This is expected to improve detection of unregistered and/or uninsured vehicles. Safe-T-Cam, which has 11 fixed sites across South Australia, uses Automated Number Plate Recognition technology and is able to detect unregistered and/or uninsured vehicles without another offence being committed, while other cameras are activated only by red light or speeding offences.

With the introduction of camera detection it has been necessary to include a provision to cater for multiple offences detected via camera in a short period of time. This is particularly so due to the continuing nature of the offending, the ability for Safe-T-Cam to detect unregistered and/or uninsured vehicles without another offence being committed, and the delay between committing the offence and receiving an expiation notice in the post. To ensure owners of vehicles do not inadvertently commit multiple offences detected by camera and incur a number of expiation fees before they receive the first expiation notice and the matter comes to their attention, the Bill proposes that where a person is given an expiation notice for an unregistered and/or uninsured offence detected by camera, that offence will subsume all other unregistered/uninsured offences detected by camera within 7 days of the date of the offence that triggered the first expiation notice. This means that if more than one expiation notice is issued for an unregistered and/or uninsured offence detected by camera in a 7-day period, payment of the first will satisfy any others issued within that period. The 7-day period was based on advice from South Australia Police as to the time required to issue an expiation notice, which will reduce to 3-4 days with the roll-out of digital cameras.

This 7-day period will only apply to camera detected offences. If a person is detected road-side and issued an expiation notice, they will immediately be made aware of the need to register their vehicle and there is no need to make provision for the delay in receiving an expiation notice through the post.

A provision to this effect has been included in the Bill to ensure that where the owner of a vehicle is detected driving an unregistered and/or uninsured vehicle by police road-side within 7 days of a camera detected offence, the 7-day period associated with a camera detected offence will no longer apply and all subsequent unregistered and/or uninsured offences detected by camera will not be subsumed. In addition, the Bill incorporates a provision to cater for the reverse example, that is, where the owner of the vehicle is detected road-side for an unregistered and/or uninsured offence before a camera offence has been detected. For consistency, the 7-day period will not be applied in these circumstances. This will ensure that owners who are caught driving their unregistered and/or uninsured vehicle by police will not have the benefit of the 7-day period during which time any subsequent camera detected offences would be subsumed.

As camera detection of road traffic offences relies on the identification of a vehicle via the vehicle's number plate, it is expected that with the increase of offences able to be detected via camera, there may be an increase in the removal of number plates or the use of false or defective number plates in order to avoid detection. The system also relies heavily on the register of motor vehicles being accurate and up-to-date and while the purchaser of a vehicle is currently required under the legislation to apply to the Registrar within 14 days of purchase to transfer the registration of a vehicle, they may not fulfil this obligation to avoid stamp duty or other fees or even to avoid being pursued for camera detected offences.

To complement making unregistered and/or uninsured offences expiable and detectable by camera, the Bill proposes to increase the penalties for number plate offences to the same level as the uninsured offence, that is, a maximum penalty of $5,000 and expiation fee of $500. This will ensure there is appropriate disincentive to remove number plates or use false or defective number plates to avoid detection for driving without registration and insurance. It is also intended that an expiation fee of $200 will be introduced for failing to return number plates, although an exemption will be provided in the Motor Vehicles Regulations 1996 to licensed motor vehicle dealers from having to return number plates belonging to an unregistered and/or uninsured vehicle if the vehicle is being kept for resale purposes.

The Bill also introduces a new requirement for the person selling a vehicle, as well as the purchaser, to notify the Registrar of Motor Vehicles of the disposal of a registered vehicle and of the details of the purchaser. The Registrar will then be able to match the notification from both the purchaser and the seller to ensure that the register of motor vehicles accurately reflects the change in ownership of a vehicle. This provision is intended to assist enforcement agencies with an improved trail of vehicle ownership for all camera detected offences. It should be noted that over 40,000 notices of disposal are already received by the Registrar from vehicle sellers each year under the current voluntary system.

The maximum penalty for a seller failing to notify the Registrar of the disposal of a vehicle is proposed to be $1,250 with an expiation fee of $160. This penalty will not be enforced for the first 12 months to enable the vehicle-selling community to get accustomed to the new requirements.

To ensure consistency, the Bill also increases the maximum penalty applying to the purchaser of a vehicle who fails to notify the Registrar. As well, it increases the penalty associated with failing to notify the Registrar of a change of address from $250 to $1,250. This increase in the maximum penalty able to be imposed by the courts aims to prevent the system from being manipulated and ensures that the register of motor vehicles will be accurate and up-to-date.

In cases where the purchaser of a vehicle fails to lodge with the Registrar an application to transfer the registration of the vehicle within 14 days, the Bill provides the Registrar with the power to refuse to transact any business with him or her under the Motor Vehicles Act until the application has been lodged.

The Bill provides a comprehensive approach to the improved management of unregistered and/or uninsured vehicles and aims to reduce the number of people who fail to register their vehicle because they think they won't get caught and if they do, it won't cost as much as the registration would have.

The remaining amendments addressed within the Bill are of an administrative nature and will improve the operation and administration of various pieces of transport-related legislation.

In particular, the Bill amends:

- the Motor Vehicles Act 1959 to allow the current Ministerial guidelines for the release of information to be prescribed by the Motor Vehicles Regulations 1996. This will provide greater transparency to the process and raise the status of the guidelines from a policy document, subject to administrative review, to a statutory instrument.
- the Motor Vehicles Act 1959 to improve the operation and administration of the Act by:
    1. removing all expiation fees set in the Act to enable them to be included in Schedule 9 of the Road Traffic (Miscellaneous) Regulations 1999 with all other expiation fees applying under the Act; and
    2. addressing some minor drafting anomalies associated with the introduction of the Statutes Amendment (Compliance and Enforcement) Act 2006.
- the Passenger Transport Act 1994 by introducing several expiation fees for offences against the Act and a regulation-making power to fix expiation fees not exceeding $500 for offences against the regulations. For example, as part of the Government's strategy for improving safety in taxis, the Bill introduces an expiation fee of $210 for the offence of contravening a condition of driver accreditation, which can be used if a taxi driver fails to display an identification card. In addition, the Bill introduces an expiation fee of $315 for drivers who do not hold appropriate accreditation and an expiation fee of $210 for persons who contravene a code of practice to be observed by approved vehicle inspectors. Introducing expiation fees for particular offences will provide an alternative to prosecution and practically act as a more effective deterrent due to the immediacy of the sanction.
- the Harbors and Navigation Act 1993 to enable the type of Emergency Position Indicating Radio Beacon (commonly referred to an EPIRB) required to be carried on a vessel operating off the coast of South Australia to be specified by regulation. At present, the legislation only specifies that an EPIRB must be carried on a vessel, but does not specify the type or that it needs to be functional. The Bill ensures that the Harbors and Navigation Regulations 1994 will be able to specify the carriage of a 406 Megahertz EPIRB as a consequence of the monitoring of the 121.5 Megahertz EPIRB being discontinued in February 2009. If the amendment is not made, there is a risk that vessel operators may carry a type of EPIRB that is not monitored, posing a significant safety risk to vessel operators and their passengers.

The opportunity has also been taken to correct various drafting anomalies within the Motor Vehicles Act and the Road Traffic Act as well as update references to a government department.

To sum up the major initiative in this Bill, at present, the penalties imposed for an unregistered and/or uninsured offence are not acting as a sufficient deterrent. It appears that, to a small group of motorists, it is worth the risk of getting caught and paying a fine rather than paying to register and insure their vehicle. If the system to manage unregistered and/or uninsured vehicles is not improved, the incidence of the offences will continue to increase and will ultimately impact on the Highways Fund, the Compulsory Third Party Insurance Fund, the Emergency Services Fund and the Hospital Fund, as well as lead to higher charges for those law-abiding motorists who register and insure their vehicle.

I commend the Bill to the House.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

Clauses 1 to 3 are formal.

Part 2—Amendment of Harbors and Navigation Act 1993

4—Amendment of section 65A—Requirement to have emergency position indicating radio beacon

This clause amends section 65A which requires vessels of certain classes operating in the jurisdiction to carry an emergency position indicating radio beacon. Currently section 65A provides that the beacon must be in good working order. The amendment requires the beacon to comply with the requirements specified by the regulations.

Part 3—Amendment of Motor Vehicles Act 1959

5—Amendment of section 9—Duty to register

This clause amends section 9 to increase the maximum penalty for offences against the section to $2,500. Section 9 makes it an offence to drive an unregistered motor vehicle on a road or cause an unregistered motor vehicle to stand on a road. If an unregistered motor vehicle is found standing on a road, the owner of the vehicle is guilty an offence. The maximum penalty is currently $750 or twice the registration fee that would be payable for registration of the vehicle for 12 months, whichever is the greater amount.

6—Amendment of section 38A—Reduced fees for certain concession card holders

7—Amendment of section 38AB—Registration fees for trailers owned by certain concession card holders

Clauses 6 and 7 update references to a government department.

8—Amendment of section 43A—Temporary configuration certificate for heavy vehicle

This clause amends section 43A to increase the maximum penalty for an offence against the section to $2,500. Section 43A makes it an offence for a person to cause or permit another to drive a registered heavy vehicle on a road in an unregistered configuration unless there is in force a temporary configuration certificate for that configuration. The maximum penalty is currently $750.

9—Amendment of section 47—Duty to carry number plates

This clause amends section 47 to increase the maximum penalty for offences against the section to $5,000. Section 47 makes it an offence to drive a motor vehicle, or cause a motor vehicle to stand, on a road if the vehicle does not bear number plates. If such an offence is committed, the owner of the vehicle is also guilty of an offence. The maximum penalty is currently $250.

10—Amendment of section 47A—Classes of number plates and agreements for allotment of numbers

This clause amends section 47A to increase the maximum penalty for an offence against the section to $5,000. Section 47A makes it an offence for a person to drive a motor vehicle on a road bearing number plates of a class in respect of which a declaration under the section has been made unless the registered owner has acquired the right to attach the number plates to the vehicle. The maximum penalty is currently $250.

11—Amendment of section 47B—Issue of number plates

This clause amends section 47B to increase the maximum penalty for an offence against the section to $5,000. Section 47B makes it an offence for a person to sell or supply number plates without the approval of the Minister. The maximum penalty is currently $250.

12—Amendment of section 47C—Return or recovery of number plates

This clause amends section 47C to increase the maximum penalty for an offence against the section to $5,000. Section 47C makes it an offence for a person to fail to comply with a direction of the Registrar to return number plates. The maximum penalty is currently $250.

13—Amendment of section 47D—Offences in connection with number plates

This clause amends section 47D to increase the maximum penalty for offences against the section to $5,000. Section 47D makes it an offence to drive a motor vehicle on a road, or cause a motor vehicle to stand on the road, if the vehicle has attached to it a number plate relating to another vehicle, a number plate that has been defaced, mutilated or added to or a colourable imitation of a number plate. If a motor vehicle is driven or caused to stand on a road in contravention of the section, the registered owner and registered operator are also guilty of an offence. It is also an offence to have possession, without reasonable excuse, of a number plate or article resembling a number plate that is liable to be mistaken for a number plate. The maximum penalty for offences against the section is currently $250.

14—Amendment of section 55C—Action following disqualification or suspension outside State

This clause amends section 55C to correct a drafting error.

15—Substitution of section 56

This clause substitutes section 56.

56—Duty of transferor on transfer of vehicle

This section provides that within 7 days after a transfer in the ownership of a motor vehicle, the transferor must either apply for cancellation of the vehicle's registration or give the transferee the current registration certificate, a signed application to transfer the vehicle's registration and a notice of the transfer of ownership. In addition, within 14 days after the transfer, the transferor must lodge the notice of the transfer of ownership with the Registrar. A maximum penalty of $1,250 is prescribed for non-compliance.

16—Amendment of section 57—Duty of transferee on transfer of vehicle

This clause amends section 57 to increase the maximum penalty for an offence against the section to $1,250. Section 57 provides that within 14 days after a transfer of ownership of a motor vehicle, the transferee must lodge with the Registrar a completed application to transfer the vehicle's registration, accompanied by the current certificate of registration, the prescribed transfer fee and any stamp duty payable on the application. The maximum penalty is currently $250. The clause also amends the section so that if an application to transfer registration is not lodged within 14 days of the transfer, the Registrar may refuse to enter into any transaction with the transferee until such an application is lodged.

17—Substitution of section 57A

This clause substitutes section 57A.

57A—Power of Registrar to record change of ownership of motor vehicle

This section provides that if an application to transfer the registration of a motor vehicle has not been made, but a notice of the transfer has been lodged under section 56, or the Registrar is satisfied on other evidence

that the ownership of the vehicle has been transferred to a particular person, the Registrar can record on the register the new owner without registering the vehicle in the name of that person.

18—Amendment of section 102—Duty to insure against third party risks

This clause amends section 102 to increase the maximum penalty for offences against the section to $5,000. Section 102 makes it an offence to drive an uninsured motor vehicle on a road or cause an uninsured motor vehicle to stand on a road. If an uninsured motor vehicle is found standing on a road, the owner of the vehicle is guilty an offence. The maximum penalty is currently $2,500 and disqualification from holding and obtaining a driver's licence for a period of not more than 12 months, unless the vehicle is a trailer with a gross vehicle mass not exceeding 4.5 tonnes, in which case the current maximum penalty is a fine of $250.

19—Amendment of section 136—Duty to notify change of name, address etc

This clause amends section 136 to increase the maximum penalty for offences against the section to $1,250. Section 136 requires certain classes of persons to notify the Registrar of a change of name or address. Currently the maximum penalty for offences against the section is $250.

20—Amendment of section 139D—Confidentiality

This clause amends section 139D to require guidelines for the disclosure of confidential information obtained in the administration of the Act to be prescribed by the regulations rather than be approved by the Minister.

21—Amendment of section 142A—Evidence of ownership of motor vehicle

This clause amends section 142A to update a cross-reference.

Part 4—Amendment of Passenger Transport Act 1994

22—Amendment of section 28—Accreditation of drivers

This clause amends section 28 to introduce an expiation fee of $315 for an offence of driving a public passenger vehicle for the purposes of a passenger transport service without holding an appropriate accreditation.

23—Amendment of section 31—Conditions

This clause amends section 31 to introduce an expiation fee of $315 for an offence of contravening or failing to comply with a condition of an accreditation as a driver of a public passenger vehicle.

24—Amendment of section 54—Inspections

This clause amends section 54 to introduce an expiation fee of $315 for an offence of contravening a code of practice to be observed by approved vehicle inspectors.

25—Amendment of Schedule 1—Regulations

This clause amends Schedule 1 to enable expiation fees not exceeding $500 to be prescribed for offences against the regulations.

Part 5—Amendment of Road Traffic Act 1961

26—Amendment of section 5—Interpretation

This clause amends section 5 by altering the definitions of registered operator, registered owner, road-related area and unladen mass.

27—Amendment of section 45A—Excessive speed

This clause amends section 45A to remove the expiation provision. This will enable the expiation fee to be fixed by the regulations.

28—Amendment of section 79B—Provisions applying where certain offences are detected by photographic detection devices

This clause amends section 79B to enable registration offences and offences against prescribed provisions of the Motor Vehicles Act 1959 to be detected by photographic detection devices. Registration offence is defined to mean an offence against section 9(1) of the Motor Vehicles Act constituted of driving an unregistered vehicle, or an offence against section 102(1) of that Act constituted of driving an uninsured vehicle. The term owner registration offence is defined to mean an offence against section 79B constituted of being the owner of a vehicle that appears from evidence obtained through the operation of a photographic detection device to have been involved in a registration offence.

The clause inserts new subsections (2c) and (2d).

Subsection (2c) provides that if—

(a) the registration of a motor vehicle has expired; and

(b) the owner of the vehicle is given an expiation notice for an owner registration offence involving the vehicle (the first owner registration offence); and

(c) the vehicle was last registered in the name of that owner; and

(d) since the vehicle was last registered, that owner has not been charged with, or been given an expiation notice for, a registration offence involving that vehicle,

the first owner registration offence subsumes all other owner registration offences involving that vehicle and committed by that owner within 7 days of the date of the commission of the first owner registration offence.

Subsection (2d) provides that if within 7 days of the date of the commission of the first owner registration offence, the owner is charged with, or given an expiation notice for, a registration offence involving the same vehicle, any owner registration offences involving that vehicle and committed by that owner after the commission of the registration offence are not subsumed by the first owner registration offence.

The clause also amends section 79B so that the requirement to allow a person an opportunity to expiate an offence against section 79B does not apply if the offence is an owner registration offence and the person has previously expiated or been found guilty of an owner registration offence or there is an order under section 70F of the Criminal Law (Sentencing) Act 1988 that restricts the owner from transacting any business with the Registrar of Motor Vehicles.

29—Amendment of section 110AAB—Driving hours

This clause amends section 110AAB to remove an obsolete reference to inspectors and replace it with a reference to authorised officers.

30—Amendment of section 110C—Offences

This clause amends section 110C to remove the expiation provisions. This will enable the expiation fees to be fixed by the regulations.

31—Amendment of section 163L—Definition

This clause amends section 163L by substituting a new definition of approved officer that includes police officers nominated as approved officers by the Commissioner of Police.

32—Amendment of section 175—Evidence

This clause amends section 175 to correct obsolete references.

33—Amendment of section 176—Regulations

This clause amends section 176 to remove an obsolete provision.

Debate adjourned on motion of Mr Griffiths.

ROAD TRAFFIC (HEAVY VEHICLE DRIVER FATIGUE) AMENDMENT BILL

The Hon. P.F. CONLON (Elder—Minister for Transport, Minister for Infrastructure, Minister for Energy) (12:03): Obtained leave and introduced a bill for an act to amend the Road Traffic Act 1961. Read a first time.

The Hon. P.F. CONLON (Elder—Minister for Transport, Minister for Infrastructure, Minister for Energy) (12:04): I move:

That this bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

The safety of heavy vehicle drivers, in the trucks that are their workplaces, and road safety for all members of the community, are high priorities for the community and the Government. We also value the important contribution of the heavy vehicle transport industry to the South Australian economy. It is estimated that the transport and storage industry contributes 4.8 per cent to the economy, accounts for 3.8 per cent of the workforce in South Australia, and supports a diverse range of industries. Nationally the road transport sector employs more than 2 per cent of the workforce and is expected to experience further growth with the land transport task anticipated by the National Transport Commission to double between the years 2000 and 2020.

These social and economic contributions are eroded by road crashes involving heavy vehicles, many of which may be preventable. It is important to recognise that the demands and actions of customers and other off road parties may influence the behaviour of heavy vehicle drivers in a way that leads to breaches of the law, inadvertent or otherwise, and possibly crashes. The costs of crashes where a heavy vehicle (truck or bus) is involved are borne by all Australians, and are estimated at $2 billion per year. The Australian Transport Safety Bureau estimates that up to 30 per cent of truck fatalities and 52 per cent of major crash insurance claims are fatigue related—at an estimated cost of $300 million per year. Of even greater importance, heavy vehicle crashes have a devastating impact on drivers, their families, the operators they work for, businesses big and small, and the community as a whole.

In line with its commitment to road safety, the Government has introduced a brief Bill to enable adoption in South Australia of model Heavy Vehicle Driver Fatigue legislation and model Compliance Scheme Regulations.

The implementation of the model Heavy Vehicle Driver Fatigue legislation will provide for a three tiered approach to management of fatigue of drivers of regulated heavy vehicles. Regulated heavy vehicles are trucks with a gross vehicle mass exceeding 12 tonnes, and buses seating more than 12 adults including the driver. Operators can choose standard hours, as set in the legislation, which allow a maximum of 12 hours work time in 24 (with minimum rest periods required within set intervals); or choose between basic fatigue management and advanced fatigue management that allow for progressively increased flexibility of work and rest hours for operators with

systems and practices to safely manage the risk of driver fatigue, in accordance with fatigue management standards and business rules. There will also be new provisions for bus operators and 'two up' driver teams, developed in conjunction with fatigue experts, which will enable them to meet fatigue management and productivity requirements.

The model legislation also extends appropriate levels of responsibility for managing fatigue risks to those off road parties who have control over activities affecting driver work and rest times, and ultimately driver fatigue. This will bring heavy vehicle driver fatigue management into line with existing chain of responsibility requirements under the Road Traffic Act 1961 in relation to heavy vehicle mass, dimension and load restraint.

The implementation of the model Compliance Scheme Regulations will provide a legislative basis for administration of approved road transport compliance schemes for heavy vehicles and/or operators and drivers. Such schemes have been offered by administrative arrangement in South Australia since their inception in 1999, and provide significant incentives and flexibility for heavy vehicle transporters who demonstrate compliance with road laws. Adopting the model Compliance Scheme regulations through South Australian legislation will better align our administration of the schemes with other jurisdictions.

Heavy Vehicle Driver Fatigue

In 1999, South Australia and several other jurisdictions adopted national "Driving Hours regulations" that regulate driving, work and rest hours of drivers of heavy trucks and commercial buses (the existing Road Traffic (Driving Hours) Regulations 1999). In 2004 the Australian Transport Council recognised the importance of developing new national policy and legislation to combat driver fatigue, beyond simple prescription of driving hour limits.

The resulting model Heavy Vehicle Driver Fatigue legislation is soundly based upon expert advice regarding fatigue. The legislation has been developed by the National Transport Commission with the assistance of jurisdictional transport agencies, the heavy vehicle transport industry and unions. Transport Ministers of all States and Territories making up the Australian Transport Council have unanimously approved the reform. The Australian Transport Council also approved a national implementation date of 29 September 2008, which has strong industry support.

The National Transport Commission conducted a comprehensive public consultation process in cooperation with jurisdictions during development of the model Heavy Vehicle Driver Fatigue legislation. More than 30 public information sessions and a number of workshops were conducted with industry and union organisations including the South Australian Road Transport Association, the Australian Trucking Association and the Transport Workers' Union. Industry and union organisations had extensive input into the development of the model national provisions, with a number of amendments made in response to submissions received during this process. The South Australian Road Transport Association has been kept informed about progress of the reform in South Australia.

Industry and unions have indicated support for consistent implementation of the model legislation, provided that adequate provision is made for rest areas for use by heavy vehicle drivers. This Government has therefore provided significant resources for its Roadside Rest Areas project in the State Budget 2007 2008.

The South Australian Bill provides the heads of power required to make regulations based upon the model legislation. The regulations will repeal and replace the existing Driving Hours Regulations. Industry and Unions will be consulted regarding any substantive local variations from the model legislation that may be identified as necessary during the process of drafting.

Only one substantive variation has been identified to date, appearing in clause 9 of the Bill, and the South Australian Road Transport Association has been made aware of it and understands the reason for its inclusion. The variation is from the model 'reasonable steps defence', which requires the person wishing to use it to establish that they took all 'reasonable steps' or there were none that could be taken, to prevent the offence. The South Australian Bill provides that a person must also show that they did not know, and could not reasonably have been expected to know, of the contravention concerned. This is consistent with:

- the reasonable steps defence provided in the recent Compliance and Enforcement amendments to the Road Traffic Act in relation to heavy vehicle mass, dimension and load restraint;
- model national legislation for Chain of Responsibility for Heavy Vehicle Speed Compliance recently approved by the Australian Transport Council; and
- the Heavy Vehicle Driver Fatigue legislation as modified and implemented in Victoria in December 2007 (Victoria being the only jurisdiction to have enacted the model legislation to date), although unlike this Bill and the model legislation, the Victorian legislation limits availability of the defence to certain parties.

The National Transport Commission and jurisdictions at officer level have indicated in principle support for recommending to the Australian Transport Council a modification of the national model legislation in keeping with the approach in the South Australian Bill, which prevents a defendant who was aware of the offence using the reasonable steps defence.

Implementation of the model legislation will build upon the framework established by the Statutes Amendment (Road Transport Compliance and Enforcement) Act 2006. The provisions relating to mass, dimension and load restraint will be extended to the regulation of heavy vehicle driver fatigue. For example, off road parties who may influence road transport will be required to take reasonable steps, consistent with their role, to prevent driver fatigue; and revised penalties and sanctions will apply to heavy vehicle driver fatigue offences and breaches of work and rest limits. This will achieve the fairer distribution of responsibility among those parties who are in a position to exercise some control over risks to safety.

The reasonable steps that should be taken will vary depending on the nature of the parties and their contractual relationship, their respective knowledge and expertise, and the measures reasonably available to them in relation to the particular risks faced. For example, a consignor demanding a delivery time that could only be achieved by a transport operator prepared to allow drivers to speed, or take inadequate rest breaks, will be liable along with the transport operator unless reasonable steps were taken to avoid making such a demand.

The reform also addresses the current problem of a driver compliant with driving hours being in breach of occupational, health and safety laws. A vehicle is deemed to be a workplace under Occupational Health Safety and Welfare legislation. The reasonable steps duty under the reform complements the existing obligation to manage risks to health and safety 'so far as is reasonably practicable' under the Occupational Health, Safety and Welfare Act 1986. It is in the interests of all businesses not to create unsafe workplaces, particularly when this may directly affect the public who share the road with heavy vehicles.

Compliance with a relevant registered Industry Code of Practice will assist in demonstrating that an operator has taken reasonable steps in relation to management of fatigue. Such non binding codes assist smaller operators in developing low cost systems suitable to their operations.

The overall impact of implementing the model Heavy Vehicle Driver Fatigue legislation is positive as a result of anticipated improvements in road and workplace safety, and reduced road and workplace accidents involving heavy vehicle driver fatigue. Implementation of the reform will result in an increase in compliance costs for the road transport industry, some of which is likely to be offset by savings to organisations as a result of improved business systems, increased certainty regarding and improved compliance with occupational health and safety obligations, and safer working conditions.

Clearly the anticipated reduction in social and economic costs of road crashes, as a result of improved safety for heavy vehicle drivers and other road users, would be of significant benefit to the community as a whole. The National Transport Commission in its Heavy Vehicle Driver Fatigue Regulatory Impact Statement anticipates that full compliance with the proposed regime would result in national net benefits of up to $143 million per annum.

Compliance Schemes

The national 'Alternative Compliance Scheme' framework, now known as the National Heavy Vehicle Accreditation Scheme or NHVAS, was approved by the forerunner of the Australian Transport Council in 1997. National policy objectives include improving safety, productivity and compliance within the road transport industry.

In April 2000, NHVAS was implemented in South Australia by notices in the Government Gazette, with Mass Management and Maintenance Management modules offered to operators. At present the Department for Transport, Energy and Infrastructure manages over 660 operators, with a combined fleet of more than 11,700 vehicles, accredited in these modules.

The Transitional Fatigue Management Scheme has operated in South Australia since 1999 through accreditation under the Driving Hours Regulations rather than under the NHVAS. Over 335 employers and self employed drivers are registered and more than 1,350 drivers presently participate in the Scheme, also administered by the Department for Transport, Energy and Infrastructure.

In South Australia, as in other jurisdictions, accreditation schemes usually provide incentives (e.g. access to additional routes, improved flexibility of work and rest hours, increased mass limits) for participating operators who are required in turn to demonstrate increased accountability for risk management and compliance, and/or to better manage the impact of their vehicles on road infrastructure.

The provision of new Fatigue Management modules (to replace the Transitional Fatigue Management Scheme) through NHVAS, along with the existing NHVAS modules, presents an opportunity to better align South Australia's administration of the Scheme with other implementing jurisdictions, currently New South Wales, Queensland and Victoria. This will minimise 'jurisdiction shopping' as well as providing a legislative basis for the administration and enforcement of the existing schemes of heavy vehicle accreditation.

As with the general approach to the model fatigue legislation, the Bill provides heads of power in the Road Traffic Act so that regulations based upon model Compliance Scheme legislation can be made.

The Road Traffic Act already provides for authorised officers and police officers to exercise certain compliance and enforcement powers in relation to an 'approved road transport compliance scheme'. The NHVAS is currently the only such scheme prescribed. The regulations will include provisions for administration of the schemes, setting fees for accreditation, and penalties not exceeding $50,000 for offences relating to compliance schemes.

Under existing arrangements NHVAS accreditation services are provided by the Department for Transport, Energy and Infrastructure free of charge. Participants in the Transitional Fatigue Management Scheme are required to pay a once off registration fee of $50 under the Driving Hours Regulations.

Compliance requirements will not be significantly increased but will be made more transparent. From 1 July 2008 operators will be charged $80 per operator (per module) and $25 per vehicle (for nomination in one or more modules) per two year renewal period in NHVAS. In the case of operators in the Fatigue Management modules of NHVAS, only employers and self employed drivers will be charged $80 for every two year accreditation period, with no fees payable for nomination of employed drivers or vehicles.

The proposed costs will enable partial recovery of the cost of administering the scheme in South Australia and are broadly consistent with fee structures applicable in other implementing jurisdictions. In addition, the per vehicle charge for the Mass Management and Maintenance Management modules will ensure that the proposed fee is automatically scaled to the size of the operation in order to avoid a disproportionate impact on smaller businesses including family businesses.

As membership in the Scheme will continue to be voluntary, operators will be able to assess the cost to them of participation, compared with the benefits that accrue from membership. It is worth noting that national accreditation reviews point to significant savings for businesses associated with safer work practices adopted as a result of accreditation. Anticipated improvements in compliance rates are also expected to contribute to improvements in road and workplace safety to the benefit of the industry and the whole community.

Conclusion

The Government is committed to improving road and workplace safety. It is also committed to providing a safer and fairer system—a more level playing field within the heavy vehicle transport industry—as a result of more effective enforcement and enhanced levels of compliance; and improved industry efficiency as a result of enhanced regulatory harmonisation between jurisdictions. These outcomes will benefit road transport organisations and the community alike.

This Bill is a product of significant cooperation, consultation and effort within South Australia and at the national level and I look forward to receiving bipartisan support in the Parliament during its debate and passage.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of Road Traffic Act 1961

4—Amendment of section 5—Interpretation

This clause makes consequential amendments to definitions of terms used in the Act, such amendments being necessary to reflect the extension of the responsibilities under the proposed Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008 to persons prospectively involved in the chain of responsibility such as consignors and loaders.

5—Repeal of Part 3AA

This clause substitutes a new Part 3AA into the principal Act, providing a regulation making power in relation to the establishment of a scheme for the management of fatigue in drivers of regulated heavy vehicles.

6—Amendment of heading to Part 4 Division 3B Subdivision 2

This clause makes a consequential amendment.

7—Substitution of section 121

This clause repeals section 121 of the Act, the bulk of which (subsections (1), (3) and (4)) has been relocated in the measure to become proposed section 173AA, and substitutes the remaining subsection (2) as section 121.

8—Amendment of section 165—False statements

This clause amends section 165 of the Act to make it clear that a record compiled under the Act is not false or misleading merely because the record contains a spelling error.

9—Insertion of section 173AA

This clause relocates the bulk of what was section 121 of the Act so as to become section 173AA, and makes changes to that provision so that provisions dealing with the reasonable steps defence become of general application to the relevant offences under the Act, and any regulations under the Act, rather than being limited to Part 4 Division 3B of the Act as is currently the case. This is because the new offences under the proposed Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008 rely in part on the defendant being able to avail himself or herself of the reasonable steps defence.

10—Amendment of section 176—Regulations

Debate adjourned on motion of Mr Griffiths.

STATUTES AMENDMENT AND REPEAL (INSTITUTE OF MEDICAL AND VETERINARY SCIENCE) BILL

The Hon. J.D. HILL (Kaurna—Minister for Health, Minister for the Southern Suburbs, Minister Assisting the Premier in the Arts) (12:04): Obtained leave and introduced a bill for an act to amend the Health Care Act 2008 and to repeal the Institute of Medical and Veterinary Science Act 1982. Read a first time.

The Hon. J.D. HILL (Kaurna—Minister for Health, Minister for the Southern Suburbs, Minister Assisting the Premier in the Arts) (12:05): I move:

That this bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

The Statutes Amendment and Repeal (Institute of Medical and Veterinary Science) Bill 2008 that is being introduced today is a continuation of this Government's commitment to improving health services for South Australians.

The Government announced its intention to establish a single statewide public pathology service called SA Pathology in September 2006. This was to be achieved by the establishment of a new public pathology service called SA Pathology which will include the functions of the three public pathology providers in South Australia.

These three providers are SouthPath, which operates as a division of the Flinders Medical Centre and is part of the Southern Adelaide Health Service and the Repatriation General Hospital, the Women's and Children's Hospital Division of Laboratory Medicine which operates as a division within the Children, Youth and Women's Health Service and the Institute of Medical and Veterinary Science (or IMVS as it is known) which is established under its own Act, the Institute of Medical and Veterinary Science Act 1982, (the IMVS Act). The IMVS is by far the largest and generally most recognised of the public pathology services in this State.

The Bill before the House will repeal the IMVS Act and enable an incorporated hospital created under the Health Care Act 2008, to continue to provide the pathology and other functions of these three services through SA Pathology, which will be a division of that incorporated hospital. It is our intention to enable CNAHS to be the host for SA Pathology.

The Bill proposes the establishment of new governance arrangements for public pathology services to ensure that these services can continue to respond to the increasing pressures on them into the future.

There are a number of factors that are placing increasing pressures on public pathology services and many of these are the same as those faced by our health system more generally. The consolidation of the three existing pathology services is therefore a key strategy to respond to these pressures.

In summary, these pressures arise from the increasing demand for diagnostic services, demand for new and high cost diagnostic technology, the need for increased quality testing, maximising the use of financial resources and future workforce shortages.

The increasing demand for diagnostic services arises from an increasing population and an increasingly older population associated with greater longevity often requiring more diagnostic services. Changing disease and illness patterns are adding to the demand on diagnostic services as are consumer expectations of these services.

To manage higher throughput of patients in hospitals will also require speedier diagnostic services and therefore a greater and more efficient level of these services. This will lead to more requirements for interpretative advice from clinical pathologists to guide laboratory testing and interpret results, increasing the demand on this workforce.

These are serious pressures which can be most comprehensively addressed with a systematic and coherent approach that is best provided by a single service, rather than through three more disparate services. The bringing of pathology services into a single service will provide a governance structure that will enable this systematic approach to be undertaken and ensure the continuation of high-quality pathology services for all South Australians.

The benefits of such a single service will mean that unnecessary duplication or overheads can be avoided. There can be better retention and recruitment opportunities for all staff and there will also be a greater capacity to respond to increasing demand and to address current and future workforce issues to ensure services can respond to new diagnostic technologies.

The need for increasing teaching and training capacities also arises from the need to ensure pathologists have the requisite skills not only as part of their training, but increasingly as part of the continuing professional development for specialist registration and hospital credentialing. Accreditation requires these members of staff to develop new skills and maintain existing ones such that pathologists and senior scientists will increasingly be expected to be major providers of training for the disciplines of pathology and meet the education requirements for medical students and postgraduate medical trainees in various specialties and other healthcare workers.

The establishment of a single statewide public pathology service will allow for better strategic planning in this area that is linked to South Australia's overall health strategies and considers all elements of pathology services. That is, diagnostic, clinical, research and teaching and training.

The IMVS has, over the period of its existence established considerable commercial interests to exploit the outcomes of its research. It has primarily undertaken this through Medvet Sciences, a company formed by the IMVS to undertake these activities. The Bill ensures that the commercial and research interests of the IMVS and Medvet can be maintained along with the significant commercial and research status, credibility and goodwill attached to these names. It is intended that the names of both IMVS and Medvet will be maintained as appropriate, to ensure that the status associated with the names is not lost.

The Bill ensures that as part of the transfer of real property, assets, rights and liabilities, all existing contracts and agreements can be honoured with no loss for any parties associated with these as a result of the repeal of the IMVS Act and the transfer of the functions to an incorporated hospital. The Chief Executive Officer of Central Northern Adelaide Health Service will be responsible for these and any future contracts and agreements. The Government announced that the Executive Director of SA Pathology will be Associate Professor Ruth Salom.

Associate Professor Salom will be responsible for the management of the pathology services and will report to the Chief Executive Officer of Central Northern Adelaide Health Service.

The Bill also allows for some assets, rights and liabilities to be transferred by the Minister to another body once the proposed Act comes into effect. The assets, rights and liabilities include all contracts, agreements, shares, property, rights, liabilities and any interests in these. The asset transfer is a highly complex process and the provisions will ensure that the transfer process can be as smooth as possible and meet the interests of the parties involved.

The Bill ensures that staff employed by the IMVS and transferred to Central Northern Adelaide Health Service do not lose any entitlements. For these staff there will be a particular advantage since, by becoming part of an incorporated hospital, they will be able to access the Fringe Benefit Tax entitlement currently valued at $17,000. This entitlement can be a considerable attraction to retain and recruit staff.

To be eligible for the Medicare payments for pathology services for private patients the Commonwealth's Health Insurance Act 1973 requires there be an Approved Pathology Authority responsible for the pathology services. It also requires, amongst other things, that the Approved Pathology Authority employ the laboratory and collection centre staff and for pathology services to be rendered by or on behalf of Approved Pathology Practitioners. The Approved Pathology Authority must also have effective control or exclusive use of the premises and equipment in the laboratory. The Department of Health is awaiting a decision from the Commonwealth to determine whether the Chief Executive of the Department of Health or the Chief Executive Officer of Central Northern Adelaide Health Service can be the Approved Pathology Authority. The Bill ensures that the Department is able to comply with the Commonwealth's decision and meet the requirements of the Health Insurance Act.

In addition to the pathology services that the IMVS provides for public and private patients, it is also obliged under its Act to provide and maintain services and facilities for the Minister of Agriculture in relation to veterinary laboratory services, services to veterinary surgeons in private practice, the conduct of research in the field of veterinary science and any other veterinary services provided by the Department of Agriculture.

This provision was made for the very practical reason that the skills and equipment required to do this work for people are very similar to that required for animals and it would not be cost effective for the times required by the Minister for Agriculture for that Minister to establish and maintain the laboratory equipment and staff that may be required as part of the Minister's portfolio responsibilities.

However, because these services are to be undertaken by an incorporated hospital under the recently assented to Health Care Act 2008, it will be necessary for this Bill to amend the Health Care Act to ensure that these functions can be continued by the incorporated hospital through SA Pathology.

At the time of the drafting and passage through the Parliament of the then Health Care Bill, the Department was still undertaking an extensive due diligence process associated with the repeal of the IMVS Act and it was not desirable to delay the passage of the then Health Care Bill through the Parliament to include the required clauses.

The amendments to the Health Care Act made by this Bill are those necessary to ensure the functions, including the veterinary pathology, research, training and commercialisation functions that the IMVS is able to undertake under the IMVS Act, can be continued by Central Northern Adelaide Health Service.

The Bill makes amendments to ensure that the long title, objectives and definition of a health service in the Health Care Act can encompass the relevant functions currently carried out by the IMVS which are to become part of the Health Care Act.

It makes amendments to ensure the Minister and the Chief Executive have the necessary functions consistent with the amended objective and to specifically enable an incorporated hospital to carry out the relevant functions that were previously undertaken by the IMVS.

In summary, the Bill before the House is very straightforward. It repeals the IMVS Act and enables the transfer of assets, rights and liabilities and where it applies, real property, to an incorporated hospital which as stated above, is to be Central Northern Adelaide Health Service.

As a consequence of the transfer of functions, it makes necessary amendments to the Health Care Act 2008 so that Central Northern Adelaide Health Service can properly undertake these functions and in particular, the veterinary functions that currently exist under the IMVS Act and ensures that that there are powers and functions relevant to these for the Minister and the Chief Executive and that the requirements under the Commonwealth Health Insurance Act in relation to pathology services can continue to be met.

As part of the proposal for the development of the single pathology service, extensive stakeholder consultation was undertaken including the universities, TAFE colleges, professional associations, unions, health service management and the pathology providers. In summary, these stakeholders identified as key to the successful establishment of the service the need to ensure:

- The maintenance of high-quality seamless service delivery throughout the state including co-ordination between the pathology service and the rest of the health system.
- Ensuring the linkages between clinical, diagnostic, research, teaching and training work are maintained within pathology services and with the health services generally, including private practitioners.
- Maintaining linkages with research functions and other collaborative efforts with Universities as well as enhancing the attractiveness and protection of teaching and training roles including with Universities.
- Protection of the recognised brand names for private and commercial work and maintaining flexibility to respond to competitor actions.

- Attracting and retaining of pathologist and scientific staff in face of increasing worldwide workforce shortages.
- Ensuring there are no adverse affects on employee remuneration, in particular, the ability to salary sacrifice.
- Having a single point of accountability for statewide service delivery.

The Bill before the House ensures that these concerns of the stakeholders have been addressed through its transitional provisions and through the amendments it makes to the Health Care Act. The Department of Health will also establish the necessary policies, protocols and delegations in consultation with the relevant stakeholders to ensure that there is a smooth as possible transition of the services to Central Northern Adelaide Health Service and SA Pathology.

The Statutes Amendment and Repeal (Institute of Medical and Veterinary Science) Bill 2008 will provide for a better and more efficient public pathology service for South Australians into the future.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of Health Care Act 2008

4—Amendment of long title

This clause makes consequential amendments to the long title.

5—Amendment of section 3—Interpretation

This clause makes an amendment to the definition of health service that is consequential upon the proposed amendments to the functions of the Minister, Chief Executive and an incorporated hospital that enable the provision of a research, pathology or diagnostic service associated with veterinary science.

6—Amendment of section 4—Objects of Act

This clause makes an amendment to section 4 of the Health Care Act 2008 that is consequential upon the amendments in proposed sections 6, 7 and 31.

7—Amendment of section 6—Minister

This clause confers additional functions on the Minister to facilitate the performance of functions previously carried out by the IMVS. The proposed amendment to section 6(1)(g)(i) enables the Minister to promote or support the provision of facilities or other forms of support to a university or other institution, authority or person considered to be appropriate by the Minister. The proposed section 6(1)(ka) enables the Minister to provide and maintain such services or facilities as another Minister may request in connection with the field of veterinary science.

8—Amendment of section 7—Chief Executive

This clause makes an amendment to section 7 of the Health Care Act 2008 to enable the Chief Executive to facilitate the provision of laboratory, research or other similar facilities, including on account of a request by a Minister under proposed section 6(1)(ka) of the Health Care Act 2008.

9—Amendment of section 31—General powers of incorporated hospital

This clause inserts new subsection (1a).

Proposed subsection (1a) provides that without limiting subsection (1), an incorporated hospital may undertake the following functions:

- to undertake or facilitate—

  the commercial exploitation of knowledge arising from its activities; or

  the commercial development of its services, functions or expertise;

- to produce and sell instruments or other equipment for use in—

  the provision of medical services, including medical diagnostic services; or

  the teaching of medical science; or

  scientific research;

- to provide consultancy services;

- to provide and maintain a drug and alcohol testing service for such persons as the hospital thinks fit;
- to conduct a testing service for the purpose of determining parentage or other human genetic relationships;
- to provide and maintain such services or facilities as the State Government may require in relation to—

  veterinary laboratory services, or services to veterinary surgeons in private practice, or other veterinary services provided by a public sector agency within the meaning of the Public Sector Management Act 1995; or

  research in the field of veterinary science;
- to conduct such other activities considered appropriate by the Minister that can be efficiently or effectively managed through the use of hospital facilities and resources.

Part 3—Repeal

10—Repeal of Institute of Medical and Veterinary Science Act 1982

This clause repeals the Institute of Medical and Veterinary Science Act 1982.

Schedule 1—Transitional provisions

This Schedule contains transitional arrangements for the implementation of the measure.

Debate adjourned on motion of Mr Griffiths.

STAMP DUTIES (TRUSTS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 5 March 2008. Page 2411.)

Mr GRIFFITHS (Goyder) (12:05): I confirm that I will be the lead speaker for the opposition on this bill and that the Liberal Party supports it in its current format.

Mr Venning interjecting:

Mr GRIFFITHS: The member notes that it is my 20th wedding anniversary today, but it is dedication to the cause that leads me here. This bill was introduced by the Treasurer on 5 March this year, and I am grateful for the fact that I was provided with an opportunity for a briefing with staff from the Department of Treasury and Finance on the 19th. As usual, my requests have been very promptly addressed, and I thank the Treasurer for that support.

The intent of the bill, as I understand it, is to correct some situations that have arisen as a result of High Court cases in the consideration of stamp duty on transfers of unit and property trusts. Some loopholes did exist, and, as part of the briefing, I was advised that the interpretation was that the situation that had previously existed would continue. The 2000 amendments, which created some of the problem, were the result of a High Court case in 1999 involving MSP Nominees Pty Ltd against the Commissioner of Stamps. Since 2000, it has become apparent that the structure of the amendments to the act has led to unintended consequences in relation to two exemptions under that act.

Confirmation was received during the briefing that no consultation was actually undertaken on the loopholes, as it was feared that some exploitation of those loopholes might occur if people were aware of the intention to amend the bill. During the opposition's consideration of this bill, it was noted that it is not normally Liberal Party policy to support retrospective legislation. But, as this legislation is prospective and retrospective and is designed to tighten up some existing loopholes, all members of the opposition are quite comfortable in supporting it.

Advice on the bill was sought from the Crown Solicitor and the Solicitor-General to ensure that this matter is put beyond doubt. I did have some discussions with the Property Council of Australia, which I thought might have some interest in the bill. The council was emailed the bill and the second reading speech but no comments were received. On the basis of the Property Council's support of the bill and on the basis also of the Liberal opposition's consideration and support of the measure, I again confirm my support for the bill in its current format, and express the hope for its speedy progress through the house.

The Hon. K.O. FOLEY (Port Adelaide—Deputy Premier, Treasurer, Minister for Industry and Trade, Minister for Federal/State Relations) (12:08): I thank the opposition for its support of the bill.

Bill read a second time and taken through its remaining stages.

CRIMINAL LAW CONSOLIDATION (RAPE AND SEXUAL OFFENCES) AMENDMENT BILL

Consideration in committee of the Legislative Council's amendments.

The Hon. M.J. ATKINSON: I move:

That the Legislative Council's amendments be agreed to.

Mrs REDMOND: I am pleased to see that these amendments have been moved. They in fact came about because the Attorney-General, to his credit, actually listened to the question asked by the member for Unley in this place when the bill was being debated on the first occasion. The member for Unley raised some pertinent questions about the change to various offences (unlawful sexual intercourse, indecent assault and persistent sexual exploitation of a child) to include in the people who could be convicted of those offences when the child had reached the age of 17 years a person who is in a position of authority over the child.

The member for Unley, in fact, raised some questions about what constitutes an employer. Is it the young girl's supervisor at the McDonald's store, and so on? That gave rise to some serious consideration by the Attorney as to just who would get caught by that definition and who would not; and amendments were then moved by the Minister for Police in the other place seeking to overcome the potential difficulty which was highlighted by the member for Unley in his contribution on the second reading.

I want to put on the record my thanks (and, no doubt, the Attorney's) to the member for Unley for raising a potential difficulty with the legislation. Hopefully, the amendments now moved and supported by the opposition in the other place and, indeed, in here will overcome that potential difficulty before it becomes one.

The Hon. M.J. ATKINSON: The offences of unlawful sexual intercourse, indecent assault and persistent sexual exploitation of a child make engaging in a sexual act with a child under the age of 17 years an offence regardless of whether the child consented. They also say that engaging in such an act with a child aged 17 with that child's consent will not be an offence unless the accused is the child's guardian, school master, school mistress or teacher. Clauses 6, 7 and 8 of the bill amend these offences by substituting for 'guardian, school master, school mistress or teacher' of the child 'a person who is in a position of authority' over the child. They define a person who is in a position of authority to mean one of a list of authority figures, including:

(f) an employer of the child (whether the work undertaken by the child is paid or otherwise).

In debate on clause 8 of the bill on 12 February the member for Unley said:

I have a question about the definition of the employer. Can the Attorney give me a definition of who is considered the employer? Is it somebody who is an immediate authority such as a supervisor? For example, a 19 year-old working at a fast food outlet puts the hard word on a 17 year-old. Is that the employer or is the employer actually the owner of the franchise? I would like that clarified...

He goes on:

What about in the instance of somebody working for the Public Service, for example, a trainee under the age of 18? Who would be considered as their employer and consequently would fall into this clause in the amendment?

I answered that it was a matter for judicial interpretation and that the court would read down the expression in favour of the accused. I am concerned, though, that this might allow people to avoid liability for unlawful sexual intercourse or indecent assault on a technicality. I therefore arranged for amendments to be moved to this clause, clause 6, and to move identical amendments to clauses 7 and 8 in the other place to say that a position of authority includes not only an employer of a child but also a person who, not being the child's employer, has the power or authority to determine significant aspects of the child's terms and conditions of employment or to terminate that employment. Each clause will retain the proviso that this applies whether the child is being paid for that employment or is working in a voluntary capacity. It is another example of the South Australian parliament having a useful committee stage where the suggested amendments of Independent and opposition members are taken on board by the Rann government.

I should add, since we are moving the amendments en bloc, that the reason for amendment No. 2 is the same as for amendment No. 1. Regarding amendment No. 3, during debate on the bill I noticed a drafting error in this clause where it inserts section 57(4)(c). It was that part of the definition of 'position of authority' that is inserted for the offence of indecent assault in proposed section 57(4)(c) that is different from the equivalent part of the definition of a position of

authority that is inserted in the offences of unlawful sexual intercourse (in clause 6, inserting section 49(5a)(c)) and persistent exploitation of a child (in clause 7, inserting section 50(8)(c)).

The definition of 'position of authority' for each offence are supposed to be identical. By this amendment I propose to correct that error and substitute for the incorrect text in the inserted section 57(4)(c) the words used in the inserted section 49(5a)(c) and section 50(8)(c).

As to amendment No. 4, the reasons for this amendment are the same as for amendments Nos 1 and 2. I thank opposition members for their useful contribution to this debate.

Motion carried.

WORKERS REHABILITATION AND COMPENSATION (SCHEME REVIEW) AMENDMENT BILL

In committee.

(Continued from 8 April 2008. Page 2672.)

Clause 23.

Mr HANNA: I just ask the minister to briefly explain the effect of deleting division 4B.

The Hon. M.J. WRIGHT: This is to do away with the loss of earning capacity. It is basically not used anymore. There are approximately 40 people who are still on the scheme, and they will stay on it. As the member would be aware, the way it operates is with an assessment at the start of the year and the injured worker gets paid a lump sum. It was used for a brief time some time ago, but it has not been used for quite some time and we are simply recommending that we delete division 4B.

Clause passed.

Clause 24.

Mr HANNA: I move:

Page 27, line 13—Delete 'Schedule 3' and substitute: Schedule 2A

This is something of a test case for the calculation of lump sum payments to workers with permanent disabilities arising from their work injury. The provision that has become well-known for lump sum payments in lieu of what used to be common law damages for pain and suffering is section 43. When it was first introduced, it was a bit less scientific than it is now in its amended form. When it first came in, the impact upon a worker's lifestyle was taken into account. Perhaps that is something like the narrative test that they have in Victoria, although I am not completely familiar with that.

However, amendments were made along the way because of the extensive evidence that was required to give a fair assessment of the appropriate degree of lump sum compensation, and what we have now is a fairly scientific approach to assessing the lump sum compensation. Under the current legislation, it is done by reference to what is known as the third schedule to the act. It is, essentially, a maims table, which lists the various body parts and body functions and ascribes a percentage of the prescribed sum payable for an injury to that part of the body or a loss of function, to an extent.

One of the important things to note about the current schedule 3 is that, after the list of various body parts and functional losses, there is a catch-all provision to ensure that things which are serious injuries but which are not listed on the table will, nonetheless, be the basis for lump sum compensation—because, after all, the original purpose was to replace the common law pain and suffering damages with a statutory amount of compensation. However, it was meant to be comprehensive.

Before I go to my amendment, I turn to the bill, where the government is scrapping the existing schedule and replacing it. Importantly, it is not including in its maims table a list of items that can be assessed, even though they are not listed in the table. So, there will be things that are covered at the moment that, as I see it, will not be covered under the government proposal.

For example, if people lose part of the function of their digestive system, perhaps because they ingested something in the course of their work duties, it seems to me that they will not receive anything by way of lump sum compensation, if the government has its way. If a firefighter is burnt and suffers nerve damage, that is something that is not listed in the table. So, if the Rann government has its way, the firefighter would not receive anything for that nerve damage, and so on. Another very common injury in noisy manufacturing or mining work sites is tinnitus, affecting

the hearing. It seems that that will no longer be covered. There is only a reference to hearing loss, not to hearing interference caused by tinnitus.

The Rann government's proposal will cause a lot of injustice. People will miss out totally for a range of work injuries, in terms of lump sum compensation. However, I was inspired by the government's provision, which states that there will be no disadvantage to workers through using the new means of calculating lump sum compensation. It seems to me that the only true way of ensuring that there is no disadvantage for workers under the current legislation as compared to the old legislation is to have both tables included in the legislation; two schedules—two maims tables—covering this. I am suggesting that we should work out the lump sum compensation on each and that the worker should receive the higher of the two results.

If the government is genuinely committed to there being no disadvantage to workers, that would be an appropriate way to ensure that, in fact, there will be no disadvantage by bringing in the government measure. I have not referred to the threshold test that the government seeks to apply. I will come to that shortly.

The amendment which I am now moving and which inserts new schedule 2A is linked to my amendment No. 88. It can be seen that that amendment is the more substantial one, in a sense. The scheme I am putting forward then is that there would be the government's existing schedule 3 (if the bill goes ahead as it wishes), but if my amendment is successful, then workers will have a choice between two possible schedules. For ease of reference, my amendments Nos 40 and 88 basically set up that scheme, and there are a few other consequential amendments. It really is a matter of holding the government true to its word. If it wants a no disadvantage clause here, then let it be truly no disadvantage to injured workers.

Let us not forget that the government's proposal is retrospective, in the sense that a work injury that took place some time ago, if it has not yet been the subject of a section 43 lump sum calculation, can be worked out under the new section. In that sense, it is retrospective and it is just bad luck for the worker if the claims manager has stuffed around, dragged things out and is waiting for new provisions to come into effect. Unless the worker can get an expedited decision from the tribunal, the worker may well be left with the government's new version of lump sum compensation and be worse off. I do appreciate that the prescribed sum is increased: I do not have any quarrel with that. This amendment will ensure that the lump sum compensation for workers, whether they are to be injured in the future or have been injured in the past but not yet had a section 43 payment made, will truly not be disadvantaged.

The Hon. M.J. WRIGHT: The government does not support the amendment. The proposed amendment negates the effect of the government's proposal which aims to streamline the process for calculating lump sum compensation. In effect, it is proposing that there be two different ways of calculating section 43 entitlements and that they run concurrently. We do not think that is a sensible alternative. Effectively, this would undo the government's proposal. Regarding examples provided by the member for Mitchell, it is my understanding that it would be likely that they would be covered through the WorkCover guides, which are based on the AMA guides.

Mr HANNA: One thing that is clear is that we do not yet have the guidelines to which the minister has referred. As far as I am aware, they are not published. Unfortunately, members are being asked to write a blank cheque. Members are being asked to vote on a system of providing compensation which has not yet even been specified. That is a grave disservice to this parliament as it seeks to do the right thing in providing injured workers with lump sum compensation.

The Hon. S.W. KEY: Having listened to what the member for Mitchell has said, it is certainly my understanding that the whole of person impairment will be measured according to WorkCover guidelines, and there is some suspicion that they will likely be based on the American Medical Association guides. What is the member for Mitchell's interpretation of the following example if this legislation is enacted? When I was a workers compensation officer for the Transport Workers Union, one of our members was hit in the face with a tarp and, as members would know, quite often tarps have metal buckles on them.

As a result, not only did he suffer quite serious facial injuries, including a broken nose, but he also lost his sense of smell. This was a problem for him because, as a dangerous goods licensed driver, in addition to all the driving qualifications and understanding of the loads that you are carting, one of the things you have to have is a sense of smell.

It is an unusual provision. Taking into account that this driver went from being a dangerous goods driver to an ordinary driver (in fact, he could not drive at all for quite sometime as a result of

his head injuries), and following on from what he has already said, how would the member for Mitchell interpret that under the guidelines proposed by the government?

Mr HANNA: I acknowledge that the loss of sense of smell is covered not only in the existing legislation (which I seek to replicate) but also in the maims table, which is being put forward by the government. So, that in itself would be covered except that there is a different calculation to be made. Under the existing legislation it is very straightforward. If there is a total loss of sense of smell, 25 per cent of the prescribed sum is payable to the worker by way of lump sum compensation. If the worker has lost 20 per cent of his sense of smell, one would expect the worker to be paid 5 per cent of the prescribed sum payable.

If we are now going to calculate that loss according to whole body impairment, we need a whole new language to describe what has happened to the worker, because the maims table itself, which we have been using for 20 years, does not connect to whole body impairment in any meaningful way. There is nothing that says that a sense of smell is a certain proportion of the whole of the body, or that an arm is a certain proportion of the whole of the body. That is why there will be guidelines, and, as I say, they have not been published yet. How extraordinary that the legislation would be brought before parliament without the means to make an elementary calculation to implement the legislative proposal!

One other angle is important which arises from the honourable member's question, and that is in relation to disfigurement. The example was given of a worker who was hit in the face by a tarpaulin. It must have been a pretty severe whack to the face to have an impact on the sense of smell—and, presumably, there was a degree of scarring or disfigurement. The existing table quite clearly spells out a basis for payment of a percentage of the prescribed sum, not exceeding 70 per cent, for disfigurement based on the extent, severity and likely duration of the disfigurement. I stress that that is not repeated in the government proposal. It seems that there is absolutely no basis for paying a lump sum for scarring. It does not matter whether you are a beauty queen; there is no reference to—

The Hon. S.W. Key interjecting:

Mr HANNA: At least some of the organisers! There is nothing there referring to disfigurement. That is another loss to injured workers if we are left with just the Rann government's new schedule.

The Hon. S.W. KEY: I also notice that the government amendments to the bill provide that an entitlement does not arise under the section in relation to a psychiatric impairment. My understanding of the entitlement under what was the bill is that psychiatric impairment would be compensated in the case that I have just cited of the driver who was hit in the face with a tarpaulin. As a result of losing his dangerous goods licence—and this is quite a few months later—he also suffered loss of prestige in his workplace, because, as I mentioned earlier, this was a very high level of driving. It also paid in excess of what an ordinary driver would be paid. My understanding of the amendments—and presumably they will be successful—is that this area is also under question now.

Mr HANNA: That is right. One of the injustices of the Rann government proposal is spelt out by that example. There was lump sum compensation for psychiatric injury up until 1992. In that raft of amendments the ability to award lump sum compensation was taken away; or one could say the right to lump sum compensation for permanent psychiatric disability was taken away. The government in its bill sought to reintroduce lump sum payment for that type of injury, and we will come shortly to the government amendment, which I presume the minister will be moving and which will delete that proposed reinstatement of lump sum payment for psychiatric impairment. The member for Ashford is right: it is in the bill but, if the government has its way, it will not be in the bill for much longer.

Dr McFETRIDGE: In relation to the injuries and amputations listed in the comprehensive list of maims, I see nothing in this list or the honourable member's amendment—perhaps the minister can take this on board, as well; and an example the member for Ashford talked about was nerve damage—in relation to chronic pain. There is nothing more debilitating than chronic pain. It is as serious as any other injury on the long list of permanent injuries. Certainly, chronic pain of its nature is of a semi-permanent nature, if not a permanent nature in some cases. Should that be included in this list?

Mr HANNA: Previously, that would have been covered under a psychiatric disability. If there was something disabling about the level of pain in itself and it was permanent, the

government gave consideration to reintroducing lump sum payment for an injury of that nature; but it is withdrawing that proposal.

A couple of the questions highlight another means by which the government is stripping away lump sum payments. Again, I refer to that descriptive list after the table of maims itself in the current legislation. It makes it clear that if a worker loses part of a body part or a body function then they are entitled to lump sum compensation in proportion to the total amount that would have been payable if they had lost all that body part or function.

I pick up the earlier point made by the member for Ashford. If a worker lost part of their sense of smell, you would work out a proportion and then relate it to the prescribed lump sum. If you do not have the explanation, which applies a proportion of the loss and translates it to a percentage of the prescribed sum—and we do not have that in the government proposal—then the implication is that you have to lose the entirety of that body part or function to get any lump sum compensation for that loss. This is another tricky means of cutting out lump sum compensation to a wide range of cases.

The committee divided on the amendment:

AYES (3)

Gunn, G.M.	Hanna, K. (teller)	Such, R.B.

NOES (42)

Atkinson, M.J.	Bedford, F.E.	Bignell, L.W.
Breuer, L.R.	Caica, P.	Chapman, V.A.
Ciccarello, V.	Conlon, P.F.	Evans, I.F.
Foley, K.O.	Fox, C.C.	Geraghty, R.K.
Goldsworthy, M.R.	Griffiths, S.P.	Hamilton-Smith, M.L.J.
Hill, J.D.	Kenyon, T.R.	Kerin, R.G.
Key, S.W.	Koutsantonis, T.	Lomax-Smith, J.D.
McEwen, R.J.	McFetridge, D.	O'Brien, M.F.
Pederick, A.S.	Penfold, E.M.	Pengilly, M.
Piccolo, T.	Pisoni, D.G.	Portolesi, G.
Rankine, J.M.	Rann, M.D.	Rau, J.R.
Redmond, I.M.	Simmons, L.A.	Snelling, J.J.
Stevens, L.	Venning, I.H.	Weatherill, J.W.
White, P.L.	Williams, M.R.	Wright, M.J. (teller)

Majority of 39 for the noes.

Amendment thus negatived.

The Hon. M.J. WRIGHT: I move:

Page 27, lines 16 to 21—Delete subsection (4) and substitute:

(4) An entitlement does not arise under this section if the worker's degree of permanent impairment is less than 5 per cent.

(4a) An entitlement does not arise under this section in relation to a psychiatric impairment.

What was asserted by the member for Ashford in regard to the lump sum for psychiatric disabilities is correct, that it was in the original bill, but the government comes forward with an amendment to remove it. Why are we doing that? Well, as we have done with other amendments, we had a consultation phase and there was very little support for this. It was removed, I think, in 1992, and the general view of stakeholders was that it was a step in the wrong direction. Although it was a recommendation of the Clayton Walsh report the government, on balance, has decided to come forward with an amendment to remove that component from the original bill.

Mr HANNA: Members will note that I have an amendment on file which deletes this subsection entirely, but I appreciate that we are dealing with the government amendment first. I will still need to proceed with my amendment after this if the government carries this amendment, because I do not believe there should be any threshold at all. In terms of the government amendment, one question I have concerns how it came to be that permanent psychiatric impairment lump sum compensation was put back in the bill and then taken out. What were the submissions to government that led it to go in and then, suddenly, to go out?

The Hon. M.J. WRIGHT: I tried to address that when I moved the amendment. Basically, what happened is that it was recommended by Clayton. When we went through the consultation it was recommended that it should be taken out.

Amendment carried.

Mr HANNA: I move:

Page 27, lines 16 to 21—Delete subsection (4)

This is an important amendment. The government seeks to introduce a threshold for payments. Even though the threshold is stated to be—now that we have passed that government amendment—5 per cent, there are actually some minor but significant injuries which would fall between 0 and 5 per cent.

I think the classic example is the loss of part of a finger, which may be less than 5 per cent when one calculates the percentage; particularly if you are talking about whole body impairment, it may not seem very much to lose half a finger, but if you are a butcher you are going to have difficulty in your cutting and slicing work.

If you are a typist and you lose part of a finger, you may be able to type with a bit of retraining but you may not be able to type at anywhere near the speed that you used to, and that is going to cut you out of a lot of work. It is also going to mean the everyday inconvenience of maybe having difficulty when you go to the toilet and are wiping yourself; difficulty in preparing food; difficulty in using a mobile phone—difficulty with a whole range of things that can flow from losing half a finger.

The common law treated this by looking at the actual impact on the person and said, 'If you are a concert pianist and you lose half a finger, and you cannot play like you used to, you get a considerable sum of compensation.' Yet, if you are a politician who does not need all of your fingers, it may not matter as much to your lifestyle or to your work, and you would not get as much under common law. The statutory approach is one size fits all, so it takes no account of the impact on a person's lifestyle or work, but I am suggesting that minor but significant injuries, like the loss of half a finger, will not be compensated under Rann's new scheme of compensation for workers. I think that is appalling.

I think that the amount of savings, if the minister was to tell us, would actually be minuscule compared with what the government is trying to achieve in terms of the unfunded liability issue. Compared with cutting workers off income maintenance after 2½ years, this is peanuts, and yet there will be dozens, if not hundreds, of workers each year who may miss out entirely because their injuries are minor, even though they are going to be very significant to them. It is not a nice thing to lose half a finger.

The Hon. M.J. WRIGHT: The member for Mitchell was wanting to remove thresholds altogether; we do not support that there be no thresholds. Clayton recommended that there be thresholds and, of course, it is common to have thresholds in other jurisdictions.

The CHAIR: The member for Mitchell, I am not sure that you moved your amendment, and perhaps you could clarify that you want the amended clause deleted.

Mr HANNA: Yes, I make it clear that I moved the amendment in my name, and I seek that the amended clause be deleted, since the government has successfully passed its amendment. One of the distressing things about the approach as we go through the bill is that we are chopping off bits of workers' entitlements here and there regarding income, lump sum, the right to this and the right to that, and the costing actually has not been presented to the parliament. Nobody has actually come forward and said that we will save X million dollars a year from this, X million dollars a year from that, and so it all adds up.

The Clayton report is not explicit in those terms and, at the very least, the minister should be coming to the parliament with those figures, if we are being asked to support these cuts. I reiterate that the amount we are talking about in terms of scheme savings here is peanuts compared with the distress we are going to give to people who have minor but significant injuries and who are going to get absolutely nothing apart from their income and medical expenses paid.

The committee divided on the amendment:

AYES (2)

Hanna, K. (teller) Such, R.B.

NOES (42)

Atkinson, M.J.	Bedford, F.E.	Bignell, L.W.
Breuer, L.R.	Caica, P.	Chapman, V.A.
Ciccarello, V.	Conlon, P.F.	Evans, I.F.
Foley, K.O.	Fox, C.C.	Geraghty, R.K.
Goldsworthy, M.R.	Griffiths, S.P.	Hamilton-Smith, M.L.J.
Hill, J.D.	Kenyon, T.R.	Kerin, R.G.
Key, S.W.	Koutsantonis, T.	Lomax-Smith, J.D.
McEwen, R.J.	McFetridge, D.	O'Brien, M.F.
Pederick, A.S.	Penfold, E.M.	Pengilly, M.
Piccolo, T.	Pisoni, D.G.	Portolesi, G.
Rankine, J.M.	Rann, M.D.	Rau, J.R.
Redmond, I.M.	Simmons, L.A.	Snelling, J.J.
Stevens, L.	Venning, I.H.	Weatherill, J.W.
White, P.L.	Williams, M.R.	Wright, M.J. (teller)

Majority of 40 for the noes.

Amendment thus negatived.

Progress reported; committee to sit again.

[Sitting suspended from 13:00 to 14:00]

PRESCRIBED MEDICATIONS

Mrs REDMOND (Heysen): Presented a petition signed by 655 residents of South Australia requesting the house to ensure changes to the Controlled Substances Act continue to exempt small residential aged care facilities from requiring trained nurses to administer prescribed schedule 8 medications.

GLENSIDE HOSPITAL REDEVELOPMENT

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition): Presented a petition signed by 274 residents of South Australia requesting the house to urge the government to retain and redevelop the whole of the Glenside Hospital site for mental health services and ensure continued access to open space and recreational facilities for public use.

ANSWERS TO QUESTIONS

The SPEAKER: I direct that the following written answer to a question be distributed and printed in *Hansard*.

HOUSING TRUST WAITING LIST

332 Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (27 November 2007). Why has a single, unemployed mother with three young children and who has been on the South Australian Housing Trust waiting list for 17 years, been unsuccessful in obtaining a trust home and when is this likely to occur?

The Hon. J.W. WEATHERILL (Cheltenham—Minister for Families and Communities, Minister for Aboriginal Affairs and Reconciliation, Minister for Housing, Minister for Ageing, Minister for Disability, Minister Assisting the Premier in Cabinet Business and Public Sector Management): In general terms, applicants for public housing are placed in the first instance in Category 3 of the waiting list. In high demand areas, Category 3 applicants do have a significant waiting time, as most vacant properties are allocated to Category 1 and 2 applicants.

If the applicant gives any indication that they have special circumstances that may warrant a higher category, they are provided with information regarding the Housing Needs Assessment process, i.e., how to apply and what criteria must be met to qualify for higher priority housing.

A range of other housing assistance is available through Housing SA, in addition to assistance with public housing. Eligible applicants can apply for financial assistance to secure private rental accommodation and some are able to purchase a property through the Affordable Homes Program. Low-cost long term accommodation is also available though the Office of Community Housing.

Applicants wishing to find out about housing options and available services are encouraged to telephone Housing SA's telephone customer service centre on 13 12 99 to arrange an appointment to discuss their situation with a housing advisor.

PAPERS

The following papers were laid on the table:

By the Speaker—

Police Complaints Authority—Report 2006-07—Ordered to be published

By the Minister for Agriculture, Food and Fisheries (Hon. R.J. McEwen)—

Adelaide Hills Wine Industry Fund—Report 2007-08
Langhorne Creek Wine Industry Fund—Report 2007-08
McLaren Vale Wine Industry Fund—Report 2007-08
Riverland Wine Industry Fund—Report 2007-08
Rural Industry Adjustment and Development Act 1985—Report 2007-08

RAPE AND SEXUAL OFFENCES

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (14:02): I seek leave to make a ministerial statement.

Leave granted.

The Hon. M.D. RANN: I am proud that I stand in a parliament today that has given its support to the most significant and far-reaching changes to South Australia's laws on rape and sexual assault in more than half a century. I am pleased to report that two pieces of legislation that encompass these landmark reforms have passed both houses of parliament and will soon become law.

This is a historic day as South Australia continues to lead the way in toughening up criminal law. The Criminal Law Consolidation (Rape and Sexual Offences) Amendment Bill 2007 was passed by both houses today, while the companion legislation, Statutes Amendment (Evidence and Procedure) Bill 2007, passed last week. It was only after extensive public consultation that our laws on rape and sexual assault were put to this parliament, which has now seen them strengthened to provide a clear and modern definition of offences and what constitutes consent to sexual activity.

It paves the way for a higher conviction rate for rape and sexual assault. Importantly, the new laws will clarify and strengthen provisions relating to the rape of victims who are intoxicated or drugged and therefore incapable of giving consent. This is one of the key parts of the legislation, and is an area which has been used repeatedly by defence lawyers in the past. Fewer than 20 per cent of rape and sexual assault cases that actually reach the courts result in a conviction; far fewer of the reported cases of rape and sexual assault ever get to court. This concerned me, it concerned the Attorney-General and it concerned the Minister for the Status of Women, as well as other members of the cabinet and of this parliament. It was clear to us that there may have been something wrong with how we define what is a rape or a sexual assault.

The reforms now supported by both Houses of Parliament clarify the definitions of the offences and remove any ambiguity about what constitutes consent. The new laws will require a judge to direct the jury, in relevant cases, that consent to sexual activity should not be assumed merely because the alleged victim:

- did not say or do anything to indicate she or he did not consent;
- did not protest or physically resist;
- was not physically injured by the activity; and
- had consensual sex with the accused person or anyone else before.

These new laws will require a person's agreement to sexual activity to be free and voluntary. Some of the circumstances in which a person will be taken not to have consented to sexual activity are:

- when they agree because of force or threat of force to themselves or anyone else, or because of threats to degrade or disgrace them or anyone else;

- when they were unlawfully detained at the time of the activity;
- when the activity occurs while they were asleep or unconscious, or while they were too intoxicated by alcohol or drugs to be capable of agreeing freely and voluntarily, or while they were affected by a physical or mental disability that made them incapable of freely and voluntarily agreeing;
- when they were unable to understand the nature of the sexual activity;
- when they agreed to the activity with the person under a mistaken belief as to the person's identity; and
- when they were mistaken about the nature of the activity.

The laws also reform and clarify rules about what a court may hear about an alleged victim's report of rape and the significance that should be given to a delay in reporting rape so that, where relevant, juries can hear the full story rather than just part of the story, and that is a critical breakthrough in the law.

The offence of rape will now include, specifically, a failure to stop what began as consensual sexual intercourse upon becoming aware that the other person has withdrawn consent. There will be a separate offence of compelling a person to sexually manipulate themselves or someone else, with a maximum penalty of 10 years' imprisonment or 15 years' imprisonment if aggravated. These laws also change the laws on: unlawful sexual intercourse; persistent sexual abuse; incest; and offences with animals.

Together, these laws will help ensure that South Australia's criminal justice system is more sensitive to the needs of victims of rape and sexual assault. Very importantly, there are provisions in here to ensure that the courts and the criminal justice system are much more sensitive to the needs of child victims of rape and sexual assault. I hope this will help the victims of these appalling crimes to come forward and report their crimes.

This government will now embark on a comprehensive education and awareness campaign about these laws. This will provide people working in this highly sensitive area of the criminal justice system with a better understanding of what the alleged victim may be going through.

South Australian courts will also be required to give priority to cases involving sexual offences against children, ahead of all other cases, unless exceptional circumstances exist. Children, especially, should not have the ordeal prolonged by the criminal justice system and endless delays. Also, special arrangements will be made for alleged victims of rape and sexual assaults, in giving their evidence to the court, to prevent the accused from personally cross-examining the alleged victim and protect witnesses from improper, harassing or humiliating questioning.

It is my belief that these new laws will become a catalyst for long-term changes to the way the justice system meets the needs of victims of sexual assault. I want to commend all members of parliament. This is an historic reform of the rape laws in South Australia, and one that I know will be welcomed by thousands of women in this state, and I hope it will be embraced by the legal profession.

MARJORIE JACKSON-NELSON HOSPITAL

The Hon. J.D. HILL (Kaurna—Minister for Health, Minister for the Southern Suburbs, Minister Assisting the Premier in the Arts) (14:10): I seek leave to make a ministerial statement.

Leave granted.

The Hon. J.D. HILL: The next step in South Australia's new state-of-the-art Marjorie Jackson-Nelson Hospital was taken today with the release of the master plan for the site. The Marjorie Jackson-Nelson Hospital Precinct Master Plan provides a detailed blueprint for the planning process for building Australia's most advanced hospital and has today been released for consultation with the community.

The precinct master plan is an important preparatory step to ensure that work can start on the site later this year with the decontamination process getting underway. The master plan is a significant step towards the hospital becoming a reality for all South Australians and ensures that the Marjorie Jackson-Nelson Hospital will open for its first patients in 2016.

The new hospital is the centrepiece of the state government's reform of our health system. The hospital will be the most technologically advanced hospital in Australia. We will design and build this hospital with the comfort and ease of patients in mind, and with guidance and input from clinical staff to ensure that it is practical and functional for their use, as well. The key to the success of this major project will be in its planning and coordination, and the master plan will be the framework for this massive project. The master plan explores a range of issues including:

- the transformation of the eyesore of the rail yards site and the rejuvenation of the city's west end;
- traffic and access;
- contamination of the site and remediation;
- the wider environmental impact including reclaiming currently restricted land for public use; and
- site functions such as stormwater, geotechnical and seismic utility infrastructure, flight path, noise and emissions, and vibrations.

The release of the plan triggers a five-week engagement process with the community. This engagement period encourages community members and others who are impacted by the project to provide feedback on the master plan. The master plan and instructions for sending written comments can be accessed on the SA Health Department website at www.health.sa.gov.au. Hard copies of the plan can be obtained by contacting 1800 643 854.

Building a brand new hospital is the best option for our health system and most importantly for our community. Redeveloping the Royal Adelaide Hospital would involve retrofitting an existing hospital. Construction work and the associated noise would disturb health care delivery and inconvenience staff and patients for more than a decade. The new Marjorie Jackson-Nelson Hospital will be finished by 2016, while rebuilding the Royal Adelaide Hospital would take until at least 2021.

The $1.7 billion Marjorie Jackson-Nelson Hospital to replace the Royal Adelaide Hospital is the centrepiece of South Australia's $2.2 billion Health Care Plan, which was launched last year, with the goal of bringing together metropolitan hospitals to provide a unified health care system.

VISITORS

The SPEAKER: I advise members of the presence in the gallery today of students from Good Shepherd Lutheran School (guests of the member for Florey).

PUBLIC WORKS COMMITTEE

Ms CICCARELLO (Norwood) (14:13): I bring up the 291st report of the committee on the Waikerie Lot 2 Salt Interception Scheme.

Report received and ordered to be published.

Ms CICCARELLO: I bring up the 292nd report of the committee on the Plant Accelerator Facility.

Report received and ordered to be published.

LEGISLATIVE REVIEW COMMITTEE

Mrs GERAGHTY (Torrens) (14:15): I bring up the 16th report of the committee.

Report received.

Mrs GERAGHTY: I bring up the 17th report of the committee.

Report received and read.

QUESTION TIME

MARJORIE JACKSON-NELSON HOSPITAL

Mr HAMILTON-SMITH (Waite—Leader of the Opposition) (14:16): My question is to the Premier. Will he promise the people of South Australia that, at the March 2010 election, his government will put to them the question of whether a $1.9 billion hospital should be built at City West; and will he guarantee the taxpayers of this state that his government will not sign any

financial agreement or deal with the private sector to commence work on building at the site until the people have had their right to vote on his proposal?

The government plans for a private sector consortium to build, own and operate the hospital at an unknown financing cost well in excess of the build price for which South Australians will be paying until 2046. The opposition proposes a new hospital at the existing Royal Adelaide Hospital site. Earlier today at a press conference the Premier said he wanted his proposal to be tested as an election issue. Do it!

Members interjecting:

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (14:18): Absolutely.

Members interjecting:

The SPEAKER: Order! The Premier.

The Hon. M.D. RANN: The Leader of the Opposition has this constant phoney anger. It is about as fake as his costings on his policies. But let me point this out. We were elected to govern. The centrepiece of our election commitments was rebuilding the hospital system that you tore down when you were in office. That is the difference: we will build hospitals and you will privatise them. So people will have a clear choice at the next election. If you want a billion dollar stadium, vote for them; if you want a brand new hospital and a desalination plant, vote Labor. We were elected to govern, and we were elected to rebuild our health system that you ran down. As a result, there are now nearly 2,500 extra nurses and about 700 extra doctors in the system. That is the difference. What was your plan for the health system? Americanise it, privatise it. Those days are over. We were elected to govern with an overwhelming majority, and we will govern.

Members interjecting:

The SPEAKER: Order! The member for Reynell.

HOUSING SA

Ms THOMPSON (Reynell) (14:19): My question is to the Minister for Housing. What assistance has Housing SA been providing to older public housing tenants to assist them to live independently for as long as possible?

The Hon. J.W. WEATHERILL (Cheltenham—Minister for Families and Communities, Minister for Aboriginal Affairs and Reconciliation, Minister for Housing, Minister for Ageing, Minister for Disability, Minister Assisting the Premier in Cabinet Business and Public Sector Management) (14:20): I thank the member for her question, and I acknowledge her strong advocacy on behalf of older South Australians, especially in her electorate of Reynell. Housing SA embarked on a one-off initiative in late 2006 that was aimed at supporting elderly tenants to remain in their homes. The program, the Aged Support Initiative, has been supported through the role of several community care consultants who have been trained in mentoring regional Housing SA service delivery staff in order that they can better advise older tenants of the services available to them so that they can live independently for as long as possible.

The care consultants have assisted Housing SA to identify all relevant services that our tenants can access and have had a focus on finding a range of community and voluntary activities in which senior tenants can become involved. Critically, they have also developed relationships between a range of other service providers in government agencies, including the Office for the Ageing, so that long-term collaboration can occur. This has been an incredibly successful program, which has achieved all its objectives, including skilling up all our staff to make sure that they provide even better services for seniors in public housing.

Resource kits containing information on support services for older people are being used in each regional Housing SA office, and the resources include electronic databases and up-to-date information on services for seniors. We are also exploring other options to keep all our service staff up to speed, including regular training sessions for the Department for Families and Communities' College for Learning and Development. That is because, at its heart, it is about ensuring that Housing SA services staff have a thorough understanding of the challenges for older tenants to make sure that the services we provide to them are as good as they can possibly be.

I would like to take this opportunity to thank the nine staff of the Aged Support Initiative, who have done an excellent job in ensuring that a strong focus on the needs of our older tenants is part of our core business, and I am confident that the skills that our staff have developed through this initiative will benefit older Housing SA tenants well into the future.

NEWPORT QUAYS

Mr WILLIAMS (MacKillop) (14:22): My question is to the Premier. What is the value of the land being transferred by the government through the Land Management Corporation to private developers for the Port Adelaide waterfront development, and what payment has been made for the property? The Land Management Corporation's annual report describes the relationship between the Port Adelaide waterfront development Newport Quays consortium and the state government as a unique partnership in which the government 'will prepare and deliver former wharves and land along the inner harbour to developers, creating seven separate precincts'. Whilst the government will spend about $40 million to deliver 50 hectares of land to Newport Quays, no mention is made of the price to be paid for the land by the developer.

The Hon. P.F. CONLON (Elder—Minister for Transport, Minister for Infrastructure, Minister for Energy) (14:23): I am quite astonished that a question like that would come so far into this process, particularly given that this whole process of the redevelopment of Port Adelaide (which I support, I hasten to point out) was commenced by the previous government prior to 2002. In fact, I think one of the first issues that we had in the first few weeks after we came to government was to do with the successful bidder, the Urban Construct/Multiplex consortium, known as Newport Quays (and I have cause to remember it, because one of the tender documents went to the wrong place, which was embarrassing). The whole process was started under a tender process.

I know that many on the other side did not enjoy the luxury of being a minister in the previous government and may not have known this, and those who were ministers often did it for a very short period of time, so they may well not have known this, but in fact, that process was commenced by the member's government.

Ms Chapman: What is the value?

The SPEAKER: Order!

The Hon. P.F. CONLON: What is the value: it is all so simple, isn't it? A number of very complex matters were dealt with under that arrangement, including the cost of remediating contaminated land and, in some circumstances, one may find that the cost of remediation of contaminated land is in excess of the value of the land. That happens all the time. I will provide a full and thorough briefing to the member for—

An honourable member: You've said that before.

The Hon. P.F. CONLON: I've said it before?

An honourable member interjecting:

The Hon. P.F. CONLON: Yes, I have said it. No, we do not—

Mr Hamilton-Smith interjecting:

The SPEAKER: Order! The Leader of the Opposition will come to order.

The Hon. P.F. CONLON: What I would say, sir, is that, on 9 April 2008, to have as your second question, a question on a legal relationship which has been put in place on a process that you started and which has been in place for six years, does show that you are not really up with the game, are you? What I would say to you is that there are a range—

Ms Chapman: Too scared to.

The SPEAKER: Order!

The Hon. P.F. CONLON: Unfortunately—

Mr Williams interjecting:

The SPEAKER: Members will come to order! If members on my left want to ask another question if there is something they want to the minister to clarify, then I am happy to give them the call. There are still 51 minutes of question time left. It is not necessary to interject when the minister is speaking.

The Hon. P.F. CONLON: Can I indicate two things? First, the question is not quite as simple as the world view the opposition has. Life is a little more complex than the way they think. That is why I would urge them to have a briefing. We do provide briefings, and they are very useful because, a few weeks ago, the Leader of the Opposition and the member for Morphett were asking very silly questions and making very silly allegations about some reports into tram and train derailments and they had a briefing; and, of course, they have now decided to desist from it.

There is a lot of use to be made of briefings. It helps to inform even those who are very difficult to inform. I would suggest that you do that. If the opposition's proposition is that the arrangement that it sought to come to with that consortium provides valuable land for no consideration to the government, well, I would be upset about that, and that is wrong. However, what I will say is that there are many complexities about this. It is a development worth some (I think) $16 billion over the full lifetime of the project—very big. I would urgently advise the Leader of the Opposition and the member for MacKillop to take a briefing on it and we can work through the complexities at a pace that suits their capacities.

SECURITY EXERCISE

Mr BIGNELL (Mawson) (14:28): My question is to the Minister for Health. What precautions has the South Australian government taken to ensure that the state's health system is prepared to cope with a terrorist attack?

The Hon. J.D. HILL (Kaurna—Minister for Health, Minister for the Southern Suburbs, Minister Assisting the Premier in the Arts) (14:28): This is a serious matter. It is unfortunate that members opposite make light of it. Sadly, the possibility of a major terrorist attack in South Australia must be taken seriously and it is therefore necessary to plan for such an eventuality. Today, about 200 staff from the Department of Health, and a similar number from other agencies, including the South Australian Federal Police and other emergency services are taking part in Exercise Southern Rebound at Football Park.

Exercise Southern Rebound involves a simulated terrorist attack at Football Park during a Showdown. According to the scenario, today is a public holiday Monday which features a Showdown, an Adelaide Cup meeting and a multicultural food and wine festival at Elder Park. The initial emergency response was limited to the resources that were available at the same time last Wednesday. Naturally, resources within the health system and other emergency systems are not all on stand-by for emergency situations, and it is important that these training exercises replicate a real situation as closely as possible.

Exercise Southern Rebound is part of the annual exercise program of the Protective Security Coordination Centre (PSCC) which has been developed in consultation with commonwealth and all state jurisdictions. It is a joint state-commonwealth investigation and consequence exercise being conducted to evaluate our capability to manage the consequences of a terrorist incident, in accordance with jurisdictional and national counter-terrorism arrangements.

From a health perspective, the aim of the exercise is to provide realistic training and to test response and coordination for a critical incident which involves mass casualties and the operation of hospital and state control centres. The exercise will also test our pre-hospital and hospital systems for the management of mass casualties, including decision-making, triage, documentation and patient flow. It would also enable us to practise national coordination of a range of responses that might be required between state and commonwealth governments. In fact, I understand that part of today's exercise involved emergency blood supplies being flown in through the National Blood Authority. The primary hospitals involved in today's exercise were the Royal Adelaide Hospital, the Flinders Medical Centre, the Women's and Children's Hospital and the Queen Elizabeth Hospital.

Commonwealth funding has been secured to back-pay staff at the hospitals participating to ensure that normal service provisions are not affected during today's exercise. Aside from today's exercise, both the federal and state governments have put in place measures to ensure that Australia is well equipped to respond. Within the health arena, these measures include establishing the Australian Health Protection Committee, which plans and prepares for emergencies. The committee includes a group of experts from across jurisdictions who meet at least four times a year. South Australia is actively involved with the commonwealth government agencies in preparedness planning for an all-hazards approach to unexpected critical events. Today's exercise will continue throughout the afternoon. I will be receiving a briefing on today's events at the Emergency Management Council briefing this afternoon.

The full internal debriefing and the evaluation will, of course, take several weeks. Identifying and rectifying any problems with the cross-agency and cross-jurisdictional exercise being undertaken today will help to prepare us to deal with a real situation should the unthinkable actually occur. I take this opportunity to thank the staff in the health system for their cooperation during this training.

LABOR PARTY FUNDRAISING

Mrs REDMOND (Heysen) (14:31): My question is to the Premier. Is the SA Progressive Business Incorporated cocktail party, to be hosted by the Newport Quays consortium on 24 April 2008, the same sort of cocktail party the consortium organised for the Minister for Infrastructure on 31 January 2006 and for the Deputy Premier in August 2005? On 22 November 2007, the Leader of the Opposition asked the Minister for Infrastructure whether he and the Treasurer had been to a Labor Party fundraising function hosted by Newport Quays. The minister told the house:

> Have I been to a function hosted by Newport Quays? Yes, I have. I think it would be peculiar if I did not go.

New fundraising events appear on the calendar of events for the ALP fundraising vehicle SA Progressive Business Incorporated, including autumn twilight cocktails at Newport Quays with the Premier, Deputy Premier and the Minister for Infrastructure at a cost of $500 a ticket.

The Hon. P.F. CONLON (Elder—Minister for Transport, Minister for Infrastructure, Minister for Energy) (14:33): I actually knew that this was the next question because members opposite are so completely transparent. Mr Speaker, the implication that is sought to be made is that we are—

Members interjecting:

The Hon. P.F. CONLON: Yes, I am. I have to say, Marty, that I am much cleverer than you—there is absolutely no doubt about that.

Members interjecting:

The SPEAKER: Order!

Mr Hamilton-Smith interjecting:

The Hon. P.F. CONLON: Now, here it is. Now we know why he would not answer the previous question. Here is the implication: that we gave them the land for free so that they would run a fundraiser for us. Here it is. We gave them the land for free because they ran a fundraiser for us. Can I say that I am not sure that we would get away with that. I am not at all confident that the Auditor-General would see that as a good deal.

Mr Hamilton-Smith interjecting:

The Hon. P.F. CONLON: Yes. He says that we are doing very well. He cannot get them off their bums! Have a look. There is one camera and they are not interested. The truth is that the business community does often run fundraisers—not for me. I correct the member for Heysen when she suggests that a fundraiser was run for me and one for Kevin. As I understand it, the funds go to the Labor Party.

The Hon. K.O. Foley: Unfortunately, I didn't see any of it in my electorate.

The Hon. P.F. CONLON: Yes. I can assure the honourable member that the electorate of Port Adelaide is not high in our priority of seats when the Labor Party goes out to fund them, as the Deputy Premier holds it by a more than a comfortable margin. But it is not unusual for businesses to go to functions in support of political parties. It was just last week—

Members interjecting:

The Hon. K.O. Foley: Hang on, he just said, 'When they're bidding for contracts.'

The Hon. P.F. CONLON: Well, I will come back to that point. Let me make it absolutely clear, for those in the opposition, that this consortium was selected under a process that they commenced—

Members interjecting:

The Hon. P.F. CONLON: 'And it smells,' they say. They are quite happy to throw this sort of stuff around, but I just wonder how someone like Roger Cook, the Chairman of Urban Construct, who has been appointed by them, feels about being accused of things like that, because it is an absolute disgrace to drag someone's name and a company through the mud, with absolutely—let

me make it clear: people do run fundraisers, and I do know that Brendan Nelson was here just last week at a thousand dollar a plate lunch. It is true that in their current straitened circumstances he managed to get barely a cricket team along. I understand there were about 12. If it were not for some tried and true supporters it might have been very embarrassing.

It is also true that the Liberal opposition—and we have this said to us on a daily basis now—is absolutely on the nose with the business community about their weasely, walking both sides of the street approach to the WorkCover legislation. They are so mortified—

An honourable member interjecting:

The Hon. P.F. CONLON: Well, you're going to find out, sunshine.

Members interjecting:

The SPEAKER: Order!

The Hon. P.F. CONLON: So, what I would say to you is that it is not—

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. Foley: They don't get it, do they?

The Hon. P.F. CONLON: They don't get it. I occasionally do go—as do the Premier and Deputy Premier—to functions organised by Progressive Business, and will continue to do so. The suggestion that there is something colourable in going to one by Newport Quays is a completely dishonest slur on us and a completely dishonest slur on a company that was chosen by their process.

Can I say that it may be that Newport Quays never runs a fundraiser for the Liberal opposition, but would you be surprised? I mean, would you be surprised? This is the second occasion that they have dragged the name of the company through the mud, for no good reason. Can I just say that the opposition sometime between now and 2010 will have to be a little more honest with people. It is not going to get to government by completely—

Mr Hamilton-Smith interjecting:

The Hon. P.F. CONLON: Oh, an ICAC would sort it. He wanted an ICAC the other day because 'the police had made mistakes'—that's why you need an ICAC. It is the Independent Commission Against Corruption; not the independent commission against making mistakes. That would be called ICAMM. They have nothing. They have nothing but slurs. They have nothing in their kitbag. It is the second question this week about a six year old legal deal that they did, and a slur on innocent people. If you think you are going to get into government on that—well, one thing I do hope for is, please let us keep Martin Hamilton-Smith until 2010. Please let us keep him. I pray for you every night, Marty. I pray that you will stay there, because we want you in 2010, because you should suffer the humiliation that you are going to drag something that was once a half decent party towards. I look forward to the humiliation you impose on your sorry people, and I have pity on those people on your side who have some credibility and some intelligence, because you are pathetic.

Members interjecting:

The SPEAKER: Order!

NATURAL RESOURCES MANAGEMENT

Mr KENYON (Newland) (14:39): My question is to the Minister for Science and Information Economy. What support is the government providing to encourage research in the fields of sustainable energy and natural resources management?

The Hon. P. CAICA (Colton—Minister for Employment, Training and Further Education, Minister for Science and Information Economy, Minister for Youth, Minister for Gambling) (14:40): I thank the honourable member for his question and, in particular, his interest in the area of science and innovation in South Australia—even if it is not replicated by the opposition.

Members interjecting:

The SPEAKER: Order! I am on my feet, and I will name any member who continues to call out when the Speaker is on his feet. I have had enough of this calling out from one side to the other while another member is speaking. The Minister for Science and Information Economy.

The Hon. P. CAICA: As I was saying, I thank the honourable member for his question. The government's 10-year vision for science and innovation (STI^{10}) drives several key initiatives, one of which is Constellation SA—and I know that at least some members in the chamber are familiar with Constellation SA. It is a mechanism for enhancing collaboration between research organisations and industry in our state and helps shape our strategic planning by providing a framework for our government's investment in areas of science research—which includes natural resource management and climate change.

The Premier's Science and Research Fund is another of our key science initiatives, and it too has a particular emphasis on environmental research. Having incorporated funding from the Sustainable Energy Research Advisory Committee program, the Premier's Science and Research Fund (PSRF) now directs a minimum of $220,000 per annum toward sustainable energy R&D projects in South Australia, which is a profound acknowledgement of the capabilities and potential of our sustainable energy industries. In line with this strategy, the Regional Sustainability Centre—

The Hon. I.F. Evans interjecting:

The Hon. P. CAICA: You will learn about some of the work being undertaken here; I know that you are, at the very least, interested in it.

The Hon. I.F. Evans interjecting:

The SPEAKER: Order!

The Hon. P. CAICA: If you listen you may learn something here. In line with this strategy, the Regional Sustainability Centre at UniSA's Whyalla campus is receiving funding to the tune of $660,000 through this year's PSRF funding round for energy, water and other infrastructure, such as solar-based water desalination, and to support work on the world's first solar thermal base-load demonstration project. It is this project that aims to support the use of environmentally sustainable practices in Upper Spencer Gulf, particularly within the mining industry, and Whyalla is ideally placed to host such a facility.

Another of the PSRF-funded projects is the aquifer storage transfer and recovery demonstration project—also the first of its type in the world. Funding of $350,000 has enabled the project management group to install pumping systems and injection infrastructure, to construct production wells and hydrogeological investigations, and to monitor water quality. The success of this highly innovative project has high significance for our state, as it has the potential to lead to reduced extraction of water from the River Murray, along with a reduction in the flow of stormwater into the ocean. It is an excellent project that will make a contribution to the environmental sustainability of the Murray system and Gulf St Vincent and will also have a positive impact on the management of stormwater and groundwater resources.

Another project the state government supports is the National Collaborative Research Infrastructure Strategy, which is funding projects associated with climate change. One of these is the South Australian biofuels pilot plant which aims to demonstrate micro-algal biodiesel capability (and I know the member for Mount Gambier has a particular interest in this). The state is contributing $2.43 million to this project with the expectation—

The Hon. R.J. McEwen interjecting:

The Hon. P. CAICA: You are interested as the member for Mount Gambier as well, yes. It is $2.43 million to this project, with the expectation of building local expertise and of establishing South Australia as a world leader in biofuels research. The government's investment in these projects—

The Hon. I.F. Evans interjecting:

The Hon. P. CAICA: I understand some schools in your area got significant investment during your time in relation to sports facilities as well. Mr Speaker, I know the opposition likes to talk down aspects of what we are doing to ensure that this state is at the forefront of sustainable environmental projects as they relate to industry in South Australia, and it can continue to do that. If opposition members are not interested it does not bother me, but I know it bothers people out there.

The government's investment in these projects and other initiatives demonstrates its commitment to environmental sustainability, and that it is a crucial priority for our state. Ongoing support for these emerging research fields will continue to provide significant flow-on benefits for South Australia as we as a state maintain our efforts to use natural resources in an efficient and sustainable way.

LABOR PARTY FUNDRAISING

Mr WILLIAMS (MacKillop) (14:45): My question is to the Premier. What is the total value of sponsorships, event hostings, or donations to the ALP or its fundraising vehicle, SA Progressive Business Inc., from the Newport Quays consortium, or its principals, since the land deal with the government was agreed to?

The SPEAKER: I rule the question out of order. In Erskine May—I do not have the exact reference—questions asked of a minister seeking information which is otherwise easily publicly available are out of order. The information that the member for MacKillop is asking about—donations to the ALP from this corporation—is available in normal declarations. So, I rule it out of order.

Ms CHAPMAN: I have a point of order, Mr Speaker. Before I move to dissent from your ruling, you indicated that you would provide clarification as to that, because the question was as to the amount of funds and sponsorships, not what had been recorded on the Electoral Commission donations return list. So, when you consider that further, I ask that you provide that information so that I can make the decision on whether to move dissent.

The Hon. K.O. Foley: Before you make a decision!

The SPEAKER: Order! I know the minister is keen to answer the question. It does set a precedent when disorderly questions are allowed. The reference is in Erskine May which, as members would know, is a big book. I do not have the page number, but I am happy to provide it. We will move to the next question. The other point is the extent to which a minister might be responsible for donations to the Labor Party, and how the minister might be responsible to the house for donations to political parties. If the member for MacKillop would like to bring up—

Members interjecting:

The SPEAKER: Order! If the member for MacKillop would like to bring up the question, I will look at it. I call the member for Heysen.

The Hon. K.O. FOLEY: I have a point of order, Mr Speaker.

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: Sir, I heard the Leader of the Opposition audibly refer to your decision as 'crap'. I ask that he withdraw that. That is highly offensive and it reflects on the Speaker.

Members interjecting:

The SPEAKER: Order! I did not hear it. We will just move on. The member for Heysen.

Members interjecting:

The SPEAKER: Order!

LABOR PARTY FUNDRAISING

Mrs REDMOND (Heysen) (14:49): My question is to the Premier. Are companies with an interest in winning government business approached to host ALP fundraising events for Labor's fundraising vehicle, SA Progressive Business Inc.? The SA Progressive Business Incorporated fundraising calendar indicates that fundraisers have been organised and hosted by Parsons Brinckerhoff, who build desalination plants; KPMG, whom the government engaged to have Adelaide included in its competitiveness report; Newport Quays, who are the consortium for the Port Adelaide waterfront development; Canberra Investment Corporation, who won the bid for the $200 million Northgate Stage 3 development; the Plenary Group, who were part of the consortium that won the government work on the prisons and courts, and have put in an expression of interest on the super schools; Bilfinger Berger Project Investments, who have also put in an expression of interest on the super schools; and Woods Bagot, who designed the new Forestry SA office and

were part of the $1.4 million redevelopment project of the Modbury Hospital emergency department. Some events have a ticket price of over $2,000 per person.

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (14:50): All donations to political parties over a certain amount of money by law have to be declared. However—

Members interjecting:

The Hon. M.D. RANN: And you have fundraisers and we all know who was bankrolling you for a long time. The key point of the matter is that, whilst declarations must be declared by law, all of us remember the Catch Tim episode where donations were laundered through shelf companies in Hong Kong, and Catch Tim caught Vickie.

Members interjecting:

The SPEAKER: Order!

Members interjecting:

The SPEAKER: Order! The Deputy Premier will take his seat. This is just unacceptable behaviour. As I said before, we seem to get ourselves into trouble when members on either side start calling out to each other while another member is on his feet. Take a chill pill. Let us take things calmly, please. Let us stop calling out. It is impossible for me to talk to the member for MacKillop about his question when there is anarchy going on in the chamber.

The Hon. P.F. CONLON: I rise on a point of order, sir. The Leader of the Opposition said to me that I had my hands in their, the businesses, pockets—fingers in their pockets—and that if there was no donation, there was no deal. That is an allegation of corruption. I find it highly offensive. He should apologise and withdraw and, if he has any courage, make it outside of the chamber.

The SPEAKER: Order! The Minister for Transport will take his seat. If the Leader of the Opposition did make that remark it is imputing improper motives on the part of the minister. I did not hear it—I was trying to discuss a matter with the member for MacKillop. If he did make the remark, then I direct him to withdraw it.

Members interjecting:

The SPEAKER: Order! The Leader of the Opposition.

Mr HAMILTON-SMITH: Mr Speaker, I will just make the point that we put up with insults from this side daily—

The SPEAKER: Order! If a member on my right has made an allegation or said something to the Leader of the Opposition, I am happy to take them to task for it. I did not hear what was said on that side either. Let us first deal with this one. If the Leader of the Opposition made the remark, I direct him to withdraw it.

Mr HAMILTON-SMITH: I would like the member to repeat the remark, sir, because my recollection of what he has just said is not what I interjected, so get up and say it again—

Members interjecting:

The SPEAKER: Order!

Mr HAMILTON-SMITH: —and we'll see if it lines up with what I interjected.

The SPEAKER: Order!

An honourable member interjecting:

The SPEAKER: Order! The Minister for Transport has said that the Leader of the Opposition said words to the effect that the minister was engaged in some sort of corruption, had his fingers in the till was, I think, the wording—

The Hon. P.F. Conlon: Fingers in the pockets.

The SPEAKER: Fingers in the pockets, I think, was the expression that was used. I ask the Leader of the Opposition, if he did make that remark, to withdraw.

The Hon. M.J. Atkinson: Tell the truth!

The SPEAKER: Order! I do not need the assistance of the Attorney-General. I ask him to withdraw. If the Leader of the Opposition wants to draw to my attention something that has been said on the other side, I am happy to deal with it. Let us just deal with this first. If the Leader of the Opposition says he did not say it, then that is it.

Mr HAMILTON-SMITH: Mr Speaker, I did not mention the word 'corruption' which he alleges I mentioned, so there is no need to withdraw it.

Members interjecting:

The SPEAKER: Order! All that is happening is this house is bringing disgrace upon itself. People in the gallery and the public expect more of us than this stupid nonsense. I just want to get on with things. I want to move on with question time. I presume opposition members have questions they want to ask. We can stay here for the remaining 20 minutes debating what was said by whom. I am directing the Leader of the Opposition, if he did make those remarks, to withdraw them. As I said, I did not hear. If he says he did not make them, I will take his word for it. But if he did make those remarks which imputed corruption on behalf of the Minister for Transport, I direct him to withdraw.

Mr HAMILTON-SMITH: Mr Speaker, I did not mention the word 'corruption', so I am not going to apologise for a word he alleges I mentioned that I did not. I did say, 'No donation, no deal.' If he assumes that alleges an improper motive, I am happy to withdraw it, but I would like to proceed with the questions, because there is an issue.

Members interjecting:

The SPEAKER: Order! Take a seat. I call members on my right to order! 'No donation, no deal,' I assure the Leader of the Opposition, is an allegation of corruption, and I am sure any authority would find that to be the case. But, as the leader has withdrawn it, let us move on. The member for Norwood.

INTERNATIONAL YEAR OF LANGUAGES

Ms CICCARELLO (Norwood) (14:56): My question is directed to the Minister for Education and Children's Services. What is the government doing to promote languages and cultural diversity in schools and preschools?

The Hon. J.D. LOMAX-SMITH (Adelaide—Minister for Education and Children's Services, Minister for Tourism, Minister for the City of Adelaide) (14:56): I thank the member for Norwood for her question; I know that she has a particular interest in language studies and would be well aware that 2008 is the United Nations International Year of Languages. I am pleased to advise the house that this year 33 South Australian schools and preschools have been awarded multicultural education grants to promote languages and cultural diversities in our communities.

These schools have embraced the International Year of Languages, and a variety of events and activities have been planned this year to promote the benefits of language education and cultural diversity. Some of the schools involved in these activities are: Flagstaff Hill Kindergarten, The Pines School, Cadell Primary School, Morgan Preschool, Morgan Primary School, East Murray Area School, North Haven School and the Open Access College.

For example, children at Flagstaff Hill Kindergarten will focus on Aboriginal culture, and this year these children will learn the Kaurna language and customs through experiencing the taste of bush tucker and interacting with Aboriginal speakers of the Kaurna language. Students from The Pines School will focus on new arrivals, with activities planned to develop sensitive and positive relationships with newly arrived students from overseas and Australian-born students to break down the language and cultural barriers.

The Multicultural Education Committee, which I have to say is one of the great success stories of our state, has worked diligently across all the education sectors involving members of many communities, and I commend it. It has developed this year a full calendar of activities, including a renewed strategy to promote languages and cultural diversity. This program will be released in September of this year. The government is committed to supporting language programs and the development of cultural understanding in all schools and preschools in the years to come, and I commend members to be involved in local schools where these programs occur because I think many of their activities are quite inspirational.

HOSPITAL WAITING LISTS

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (14:59): My question is to the Minister for Health. Is the minister aware that the Department of Health in New South Wales has issued new guidelines on hospital waiting lists as a result of a finding of the New South Wales Independent Commission Against Corruption in its 'Investigation into the alleged misreporting of hospital waiting list data' dated February 2004; and, if so, is the data published by our department at the same standard, including that published on the website?

The ICAC inquiry found that, although the practices in misreporting hospital waiting list data in New South Wales were not implemented in bad faith, it was of the opinion that the existing guidelines on hospital waiting lists needed to be substantially tightened to adequately reflect the importance attached to waiting list data as a performance indicator of the public health system. In particular, it stated:

> Those guidelines were so loose and ambiguous that they not only created extensive opportunities for data to be artificially manipulated for personal or political purposes, but they also contributed to the making of allegations that improper practices had occurred when they had not.

Further, the commission recommended that the Department of Health introduce greater transparency in relation to the precise compilation of the official waiting list statistics.

The Hon. J.D. HILL (Kaurna—Minister for Health, Minister for the Southern Suburbs, Minister Assisting the Premier in the Arts) (15:00): I thank the member very much for her question because it highlights a point that the government has been making for a number of years. The comparisons of various states of the commonwealth one with the other in relation to these matters, as the opposition likes to make from time to time, is fraught with difficulties, because each state measures different kinds of things—they measure waiting times starting and finishing at different points in the continuum. I have argued in the past that we have a very good set of results in South Australia but, in comparison with states that have a sloppier recording system, we appear to be in a worse situation. I am grateful to the deputy leader for bringing that point to our attention, because it highlights the difficulty of comparing one state with another.

The second point I would make is that the new commonwealth government is very committed to ensuring that all the states publish data that is of the same rigour and standard, and that is something that I very strongly support. In fact, the new Prime Minister has made it clear that increased federal funding, which is something for which we have been arguing, will flow only if the states undertake to publish data on a true comparative basis. That is also something that I and the government of South Australia strongly support.

ROYAL ADELAIDE HOSPITAL, MENTALLY ILL PATIENTS

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (15:02): I am certainly pleased to hear of the high standards imposed by South Australia, because my next question is also to the Minister for Health. Is the minister aware that mentally ill patients presenting at the emergency department of the Royal Adelaide Hospital are currently being sent to a ward called P3AD, which exists on the computer but which actually does not exist? If so, what action is being taken? The opposition has received complaints that patients are being referred to this fictitious ward for the specific purpose of distorting the statistics in an attempt to suggest that the number of mentally ill patients presenting at emergency departments is decreasing.

The Hon. J.D. HILL (Kaurna—Minister for Health, Minister for the Southern Suburbs, Minister Assisting the Premier in the Arts) (15:03): The deputy leader, of course, is making a slur against the officers of the Royal Adelaide Hospital—the hardworking doctors, nurses and officials who work in that hospital. It would not be the first time that the deputy leader has attempted to defame the hardworking doctors, nurses and officials of the health system in South Australia. That is the only approach that she takes in this arena. As the deputy leader knows, I am not responsible for mental health issues. I will obtain a report from the responsible minister.

KANGAROO ISLAND FIRES

Mr KOUTSANTONIS (West Torrens) (15:04): Will the Minister for State/Local Government Relations advise how the government is working to support the Kangaroo Island Council and the local community, in particular, following the devastating bushfires in December?

Mr Pengilly: It's on the website.

The Hon. J.M. RANKINE (Wright—Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Volunteers, Minister for Consumer Affairs,

Minister Assisting in Early Childhood Development) (15:04): Well, get up and answer. Last year, the state government and the Kangaroo Island Council jointly commissioned a study into the—

The Hon. I.F. EVANS: Sir, I rise on a point of order. You previously ruled in this question time that questions on information that is readily available are out of order. The answer to this question is on the website. I ask you to rule accordingly.

The SPEAKER: Order! Perhaps the minister has something else to add that is otherwise not available.

The Hon. J.M. RANKINE: Thank you, sir. I will be expanding on a number of issues. I would have thought the member who represents that area would be keen to hear about this seeing that he came into this chamber saying that the Kangaroo Island Council was falling apart.

Members interjecting:

The SPEAKER: Order! The Minister for State/Local Government Relations has the call.

The Hon. J.M. RANKINE: The member for Finniss came into this chamber saying that the Kangaroo Island council was falling apart. I would have thought he would have been keen to hear what the state government was doing to support a council in his electorate.

The Hon. P. Caica: It happened under him.

The Hon. J.M. RANKINE: And it did happen under him. We know his track record as mayor: it was not all that great.

Ms CHAPMAN: Mr Speaker, I rise on a point of order. This is clearly a breach of standing order 127(2). It is imputing improper motives.

The SPEAKER: I do not think reflecting on the performance of the member for Finniss as mayor is imputing improper motives. However, it is debate.

The Hon. J.M. RANKINE: Thank you, sir. Last year, the state government and the Kangaroo Island council did jointly commission a study into the challenges facing Kangaroo Island, its council and how best we can support them in taking their community into the future. The study is significant to South Australia, as well as to Kangaroo Island, because of the unique nature of Kangaroo Island as a tourist destination. I understand it attracts approximately 164,000 visitors annually.

More importantly, Kangaroo Island boasts a vital community, and the study identified some real opportunities to unlock the further potential of the island through all the relative agencies working collaboratively. There were 11 recommendations in all in this report. Some of them included: council strengthening its financial governance; looking at further opportunity for resource sharing (which is something we are encouraging all councils to do) and collaborative opportunities it has with other councils with similar regional status; council seeking the support of its regional LGA in relation to applying for funding assistance through the special local roads program; and council, possibly in conjunction with the Kangaroo Island Development Board and other organisations, research and, if appropriate, pursue and reform the commonwealth parliament's income tax act to its residents to receive the remote locality income tax concessions.

This report has been formally tabled by the council and it will be reporting on a six monthly basis. The studies produced a number of challenges for the council, but it has accepted then in a positive manner and it is moving forward. It has already adopted a number of the recommendations. There is no doubt that Kangaroo Island is a resilient community. As members are aware, last year there was a terrible fire on Kangaroo Island. Vast areas of national park were burnt to the ground and significant road infrastructure was damaged in a number of areas.

Shortly after the fires abated, I visited Kangaroo Island to see for myself the volunteer effort on the island. I take this opportunity again to thank the volunteers, islanders and those who travelled from all over the state and who gave so willingly their time and expertise in this time of terrible tragedy on Kangaroo Island. During my visit, I could appreciate that there was an acute need to reinstate the roads in some places and, in others, ensure that supporting infrastructure such as signage, hazard markers and guideposts were returned to the condition they were in prior to the fires. In addition, happening as this did at the onset of the peak tourist season and with tourism playing such a key role in the island's economy, it was also hugely important for the

holiday-makers to continue to enjoy the natural beauty the island has to offer and to maintain the value those same holiday-makers bring to Kangaroo Island's economy.

That is why I moved very quickly to ensure that an interim grant payment of $250,000 was made from the Local Government Disaster Fund to assist the council in getting the road infrastructure up and running again as quickly as possible. The mayor has advised that the council was overwhelmed with the assistance provided by the state government in response to the bushfires, as opposed to the lack of appreciation of the member for Finniss. Kangaroo Island is a unique and precious area in our state, so it is important that, with the community, all levels of government continue to work cooperatively to ensure its future prominence as a key tourist destination, all the while ensuring that the pristine natural beauty is sustained.

REPATRIATION GENERAL HOSPITAL

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (15:10): I had my flu shot the other day, and I have been coughing ever since. Thanks for that advice! Will the Minister for Health be advising the veteran community of his intention to abolish the Repatriation General Hospital board and transfer the governance responsibility to the Southern Adelaide Health Service before or after ANZAC Day? Not only has the Paxton Consulting report recommended that the Repatriation General Hospital be integrated with the Southern Adelaide Health Service but the government has already referred this issue to its consultative committee, which is meeting again this month.

The Hon. J.D. HILL (Kaurna—Minister for Health, Minister for the Southern Suburbs, Minister Assisting the Premier in the Arts) (15:11): First, can I say that the deputy leader cannot get the flu from a flu shot, and to spread that rumour is totally wrong. The fact that one has a cough is absolutely coincidental. The only—

An honourable member interjecting:

The Hon. J.D. HILL: Dead flu cells go into your body, not live ones, so you cannot get the flu from a flu shot. It is a myth, and people need to have that myth knocked on the head. The only reaction you can possibly have to a flu shot is if you are allergic to eggs, because the base on which the flu—

Ms Chapman interjecting:

The Hon. J.D. HILL: Well, then, in that case, the honourable member is not coughing because of eggs—I am glad to hear that! The issue in relation to the management of the Repatriation General Hospital has not changed. The honourable member asked me a question about this some time ago—it may have been on multiple occasions. The government's position is very clear.

We believe that it is in the best interests of the veterans and in the best interests of the Repatriation General Hospital if it is brought within the Southern Adelaide Health Service. We have made no secret of that. I have had a number of discussions with organisations representing veterans, and I have made it plain to them, as does the legislation, that we will not do that without their support. I understand that there is general support amongst the veterans' organisations to do that. They believe it is in their best interests—

Ms Chapman: Why don't you tell them?

The Hon. J.D. HILL: It is not a matter of telling them; we are—

Ms Chapman interjecting:

The SPEAKER: Order!

The Hon. J.D. HILL: Mr Speaker, the deputy leader has a propensity to set up an argument which is based on a set of false assumptions. As I made it plain, there is no intention to pre-empt any decision in relation to this matter without the full cooperation, support and involvement of the vets themselves. There is no intention to make any decision about this without their being a part of it. As I have said to the house on many occasions, we will not do it in any way which avoids that process. We are openly discussing the matters with them. In fact, I will be attending an ANZAC Day fundraising event for the Foundation of the Repatriation General Hospital this Saturday night, and I will be saying precisely that to all the vets who are there in attendance.

CHILDREN IN STATE CARE INQUIRY

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (15:14): Does the Premier's announcement that his government will report back to the parliament on the recommendations of Commissioner Mullighan's inquiry by 19 June 2008 mean that there will be no provision in this year's budget for a secure care therapeutic facility for children at risk? Commissioner Mullighan reports that the department has identified 16 children living in residential units as frequent absconders and considered to be at high risk from sexual exploitation. I have previously brought to the parliament's attention the story of a 14 year old girl who was arrested for shoplifting and who was left at large. Now she is six months pregnant and being held at the children's gaol at Magill, and unless this facility is progressed these children will remain at risk or down at the gaol.

The Hon. J.W. WEATHERILL (Cheltenham—Minister for Families and Communities, Minister for Aboriginal Affairs and Reconciliation, Minister for Housing, Minister for Ageing, Minister for Disability, Minister Assisting the Premier in Cabinet Business and Public Sector Management) (15:15): The only reason that 19 June has been fixed upon as a date to respond to the recommendations is that it is actually the date contained within the legislation. We are obliged to report back to the parliament by 19 June.

Ms Chapman interjecting:

The Hon. J.W. WEATHERILL: I must say that it would not be necessary to be in the budget if we could build this thing by 19 June because it would be in this fiscal year. I do not actually understand the point that has been raised. We are good, but we cannot build a building inside six weeks. As fast as this government is, we will not be able to respond that quickly.

The recommendations, 54 of them, will require some careful consideration. There is also a provision within the act to actually report back to the parliament within six months, a further six months, about the details of our implementation plan. This is the time scale that you forced on us, and I must say in an unprecedented fashion, for executive government to have in a piece of legislation not only the fact that we have to table something in the parliament within three days but then respond within another few weeks and then report back to the parliament on how we implemented it.

We conceded to those amendments. We conceded to those very tight time lines, because we are were content to meet them, but do not come in here now and complain about the fact that we are meeting the very time lines that you imposed on us, especially about very complex matters. We did take two recommendations and single them out for special and immediate treatment. One was the DPP, the prosecution of these evil offenders, and the other was the apology. We will deal with the balance of the recommendations as quickly as we can, before 19 June if possible, but by no later than 19 June.

HEALTHY EATING PROGRAM

Mr PISONI (Unley) (15:18): My question is to the Minister for Education and Children's Services. Does the minister stand by her answer to a question on notice in relation to anticipated financial problems for canteens associated with the 'Eat Well' program and that:

> There is no evidence that the implementation of the Healthy Eating Guidelines—and hence the removal of unhealthy food—will result in a financial loss for schools.

Despite the acknowledged importance of promoting healthy eating habits for our children, schools have indicated a lack of resourcing to properly implement the program. A study by Dr Claire Drummond from Flinders University has confirmed this. Morphett Vale High School and Parkside Primary School, in my own electorate of Unley, have now been forced to close their canteens, the lack of support to implement the new Healthy Eating program being blamed for the closure.

The Hon. J.D. LOMAX-SMITH (Adelaide—Minister for Education and Children's Services, Minister for Tourism, Minister for the City of Adelaide) (15:19): I thank the member for Unley for his question. It is a pity that he does always seek to talk down public education. When I visited Unley Primary School they were overwhelmed with the success. The students were promoting healthy eating and lauding the change and saying the food was much better than they had ever had before. It is clearly a complex issue. We, like many parts of the world, face an extraordinary number of obese—

Mr PISONI: Point of order, Mr Speaker: the minister is obviously confused; I did not mention Unley Primary School. Parkside Primary School have closed their canteen.

The SPEAKER: Order! I do not uphold the point of order. The Minister for Education.

The Hon. J.D. LOMAX-SMITH: The world faces an unprecedented number and expansion of the percentage of young people with obesity. I think I am probably one of the last generations that can look forward to living longer than my parents, and the next generations of young people can, I think, be sure at this point in time that they will be dying after a shorter life than their parents.

Mr Pisoni interjecting:

The SPEAKER: Order, member for Unley!

The Hon. J.D. LOMAX-SMITH: I think this shocking revelation is enough to shake everyone into action, and doing nothing is not an option. Much as the member for Unley would like to see school children eating Chiko Rolls and greasy chips and extending their waistlines, getting diabetes and dying young, this government takes the problem of obesity very seriously. We recognise that the problem is an across-government issue, and we work closely with health and education.

We feel very proud of the initiatives that have involved community action, education, teaching, and ensuring that children—whether they are in childcare, preschool or school—have a healthy environment. Banning junk food in schools is a good issue, a good measure and a good step forward. The member for Unley has done nothing but criticise healthy eating programs. He has criticised the programs that have worked so well in Unley Primary School, he has criticised the programs—

Mr Pisoni interjecting:

The SPEAKER: Order!

The Hon. J.D. LOMAX-SMITH: He has criticised the programs that have been successful. I agree that it is possible to find some schools in which there has been a struggle, but we have spent a year educating canteen staff, training communities, and working with providers and suppliers to help them provide healthy food. We have had a year of workshops and support. If there is a school that wants additional help and support, we will give it to them.

The reality is that doing nothing is not an option. There are plenty of schools that have said they have made more money, their children are more attentive, more active and more alert, because of our healthy eating initiatives. These include not just banning junk food, of course, but also having a massive program of education—

Members interjecting:

The SPEAKER: Order! Is the minister finished?

The Hon. J.D. LOMAX-SMITH: Thank you, sir. Members opposite are not listening so I may as well sit down.

SCHOOL COMPUTERS

Mr PISONI (Unley) (15:22): My question is to the Minister for Education and Children's Services. Does the Treasurer have a projected figure from the minister for the installation, rewiring, maintenance, airconditioning, electricity, teacher IT training and associated costs for the 62 South Australian high schools accepted in the federal Labor government's first round of the education revolution?

Federal minister Gillard has made it clear that, despite election promises implying a computer for every student, the now revised goal ratio of 1:2 will not include federal funding for the most significant infrastructure and implementation costs (now estimated to be up to $3 billion) associated with the entire program. This shortfall will have to be made up out of the state budget or directly from the pockets of parents and students through increased school fees.

Members interjecting:

The Hon. K.O. FOLEY (Port Adelaide—Deputy Premier, Treasurer, Minister for Industry and Trade, Minister for Federal/State Relations) (15:24): Hang on, you asked a question—

Mr Pisoni: Has she worked it out? Has she told you?

The SPEAKER: Order! The Treasurer has the call.

The Hon. K.O. FOLEY: Now that we are quiet, I will continue. It has not been lost on state treasurers around the nation that, with some of the election promises of the federal Labor government, there may be a cost to the states. As diligent and aware treasurers, we have raised this matter with the federal government because, in what is now the true spirit of ending the blame game and of cooperation, we have pointed out to the federal government that there are costs associated with some of their promises. As members opposite would be aware, the current situation is that a new arrangement is being put in place for SPPs—that is, for those not aware, special purpose payments. There will also be—

The Hon. P.F. Conlon: The FAGs have gone, haven't they?

The Hon. K.O. FOLEY: The FAGs have gone; SPPs are still around. However, we are working with the commonwealth on the new SPP arrangements. As to what those arrangements will be, with an issue such as the cost of implementing federal government policies, we are working it through with the commonwealth. Quite appropriately, the Education Department will be doing its cost assessment, but we have not yet had a sign-off with the commonwealth as to who will be paying for what.

Mr Pisoni: Have you ruled out parents paying?

The Hon. K.O. FOLEY: I do not think we have ever intended for parents to pay. In all seriousness, this is—

Mr Pisoni interjecting:

The SPEAKER: The member for Unley will come to order.

The Hon. K.O. FOLEY: Yes; I rule out parents paying for it, because this is a federal government—

Mr Pisoni interjecting:

The SPEAKER: The member for Unley is warned.

The Hon. K.O. FOLEY: This is a federal government policy, and the education department will be doing its bit in terms of participating in that program. What, if any, costs will be borne by the states is being worked out between state Treasurers and the federal Treasurer, and we will resolve that matter in the months ahead.

The SPEAKER: Just before I call the member for Unley, I will return to the member for MacKillop's question. I ruled the question out of order on the grounds that the information he was seeking was otherwise readily available. For the purposes of the house, that is on page 303 of Erskine May, and members can look at that reference.

The member for MacKillop made the point to me that not all donations are required to be disclosed, and I accept that point. However, the point remains—and I refer to page 349 of Erskine May:

> The Speaker has ruled that the question may not be asked which deals with the action of a minister for which he is not responsible to the parliament.

I do rule that donations to a political party are not the responsibility of a minister: they are administered by the political party and, quite rightly, the minister is not involved in collating information about donations. I am in the unusual position, given the keenness of the Minister for Transport to answer it, of perhaps having a dissent motion on my ruling carried with the support of the government. However, until that unhappy event, and on the basis that the minister is not responsible to the house for political donations made to the political party of which that minister is a member, I rule the question out of order.

Mrs REDMOND: I seek some clarification, Mr Speaker.

Members interjecting:

The SPEAKER: Order!

Mrs REDMOND: I would like clarification as to what you have just said, sir, namely, whether that means that the original ruling upon which the question from the member for Davenport was then based has now been replaced by a different ruling on your behalf for ruling the member for MacKillop's question out of order.

The SPEAKER: Yes; that is correct. I was wrong. The information that the member for MacKillop sought was not readily available. I erred, and I humbly apologise to the house for that; however, I do—

The Hon. K.O. Foley interjecting:

The SPEAKER: Thank you. I rule that the question is out of order on the ground that the minister is not responsible to the house.

Mr HAMILTON-SMITH: I have a point of order, Mr Speaker.

The SPEAKER: The Leader of the Opposition.

Mr HAMILTON-SMITH: Is the house to take from your ruling that, under your speakership, you are directing that no questions will be asked henceforth of this Labor government about political donations, or the influence that those political donations may have on their roles as ministers or in the carrying out of their duties? Is the direction from you that the house is not to discuss such matters?

Members interjecting:

The SPEAKER: Order! The Leader of the Opposition is best advised, in seeking such clarification, to approach the chair or come to see me in my office: I am happy to speak to him at any time. No, that is not my ruling. That is not what I am saying at all. The member for MacKillop's question was very specific and asked for information from the minister about donations to the Australian Labor Party, and about how much they were. I have ruled that he is not responsible to the house for that.

As to the other questions that the opposition have asked today, which have been about the attendance of ministers at fundraisers and things like that and whether donations have had any effect on a minister's decision making, of course those questions are in order and of course ministers are answerable to the house for those sorts of things. I am simply ruling that the specific question of the member for MacKillop about the level of donations was out of order.

ROYAL ADELAIDE HOSPITAL, MENTALLY ILL PATIENTS

The Hon. J.D. HILL (Kaurna—Minister for Health, Minister for the Southern Suburbs, Minister Assisting the Premier in the Arts) (15:30): I seek leave to make a ministerial statement.

Leave granted.

The Hon. J.D. HILL: Today in question time, the Deputy Leader of the Opposition asked me a question about mental health patients attending emergency at the Royal Adelaide Hospital and being referred to a non-existent ward called P3AD. I am advised that, when a mental patient is brought into the emergency department of the Royal Adelaide Hospital, they are coded as such and the code number for their circumstances is that number, P3AD. When they are actually transferred to a ward, they are given a different code number. This is a code that relates to them and not to any mythical ward.

GRIEVANCE DEBATE

KESAB

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (15:31): In 2006, I sent a letter extending birthday wishes to KESAB (Keep South Australia Beautiful). It is an organisation that has been a leader in environmental action and education since 1966. The founders of KESAB were the Royal Automobile Association, General Motors Holden, Australian Glass Manufacturers, SA Brewing, Jaycees and *The Advertiser*.

I gave them that birthday greeting at the time, indicating that I had a New Year's resolution for 2007 and that was to ensure that we rid South Australia of plastic wrapping on our newspapers. Consistent with that, I wrote to the Editor of *The Advertiser*, Mr Mel Mansell, and indicated to him that getting rid of wrappers from our newspapers was an environmental matter which was of some importance to me, and I explained to him that:

Of course I recall the days of soggy newspapers, but surely it is time for us to review the matter particularly as:

(a) It is near impossible to find the end of the plastic to unravel it.

(b) It is wrapped so tightly it needs a garden roller to restore it to readable flatness.

(c) The plastic is so tough you need a butcher's knife to open it.

(d) And we are in a drought most of the year so it was no longer fit for purpose.

(e) It can't be ecologically sound. It must do the same damage as plastic shopping bags.

Since that time we have heard a lot from representatives around Australia concerning shopping bags, and they seem to have grabbed the attention of a number of people who are concerned about ensuring that we minimise the damage of single-wrapping, throw-away packaging that has been a blight on the environment. It is fair to say that, whilst I received responses from Mr Hamra, Mr Mansell and also Mr Gardner, *The Advertiser* took the view that it was a matter in Peter Wylie's responsibility, so of course it was flipped over to him.

A couple of years ago, this came to their attention and went down through the ranks, and I have had a few meetings. They referred me to the Australian Newsagents Federation because they represent the people who roll them, wrap them and distribute them, often small businesses spotted around the metropolitan area.

It is important to note that we in South Australia have a very high level of home delivery of newspapers, and therefore it is an area of particular concern in this state. I am pleased to report to the house that after a number of years of meetings I was recently advised by Mr Colin Shipton, the current state manager (we have been through one or two since this started) of the Australian Newsagents' Federation, that they have been in constructive discussion with *The Advertiser* and, as I understand it, have at least progressed to the stage where they are now considering a thinner plastic wrapping but also over a much smaller width.

Whether we end up having two thin strips of plastic at either end of the newspaper or a centre strip may depend on the decisions made as to how they might secure the weekend newspapers, which of course are very thick. I think they also have an occupational health and safety issue with the people who have to throw these newspapers, but I am pleased to at least be able to report that that is progressing, and I will advise the house in due course how we go with that project. I think it is an important issue for South Australia because we have the opportunity to lead the nation in this area, and I look forward to providing a further report in due course.

POLITICAL DONATIONS

The Hon. P.F. CONLON (Elder—Minister for Transport, Minister for Infrastructure, Minister for Energy) (15:36): I apologise to the house that I am not going to deal with something as important as the plastic wraps on newspapers. I will deal with the far more mundane subject of donations to political parties. Today in question time the opposition asked a number of questions in particular about the companies Newport Quays and Urban Construct and implied that there was something colourable about the fact that they do business with the government and also hosted a fundraiser for the government. I have to say that those guys down there are pretty shrewd. My understanding of those fundraisers, incidentally, is they host them and make everyone else come along and pay, so I am not sure how much money actually flows from them. But the implication was that that was colourable.

The opposition went on to ask questions and imply that we accept donations from people who do business in South Australia and occasionally with the state government, and that is highly improper. The truth is that donations to political parties are an ordinary thing, and I am going to deal with this matter. I preface my remarks by saying that when I mention companies I do not imply, as the opposition has implied today, that they have done anything at all improper, but the hypocrisy that we saw today is the suggestion that you should not receive donations from companies you deal with.

I went and grabbed the 2001-02 return for the Liberal Party with the list of donors to the Liberal Party, Mr Speaker. You would, of course, know that Rob Gerard (and Gerard Industries) is very high on that list, and we have said he is free to do so. I know that ETSA Utilities is on that list. Of course, that is the company to which the previous government sold the electricity distribution system. There are lots like that. SkyCity Adelaide bought the casino from the previous government. All those sorts of things are very interesting. Of course, Built Environs I think built a bridge for the previous government. Was it the Berri bridge?

The Hon. K.O. Foley: Yes.

The Hon. P.F. CONLON: I stress that I am not in the least suggesting that it is improper for these companies to have done this, but let us bell the cat on hypocrisy. Balderstones, of course, (as was Urban Construct) was intimately involved in the Holdfast Shores development and was a

donor. But I will mention the most interesting donor I found, Mr Speaker, and members have to bear in mind, as I said in question time, that the deal for Newport Quays at Port Adelaide went to tender under the previous government, some time I think in 2001.

It actually came to the new government in early 2002. It was very interesting to see, and I am reliably advised, that the return of the Liberal Party in 2000-01 as it appears on the AEC's website shows a donation of $15,000 from (shall we guess?) Urban Construct. The 2001-02 return shows a donation dated February 2002 (during the election campaign, when the tender was out) from Urban Construct of $9,500 to the Liberal Party. I defend their right to make donations to political parties as an ordinary part of the political process.

The utter hypocrisy of members of the opposition to suggest that a deal that was let under their government was somehow influenced ex post facto by Newport Quays or Urban Construct running a fundraiser is just complete and utter hypocrisy. They were very happy to run around with their hands out to Urban Construct—and Urban Construct did make donations, I have to say. I do not at all question its honesty, but I do question its judgment.

However, can I assure the Liberal opposition that I think the attack today and previous attacks has probably cured them of making that mistake in the future. The attack today will see this Liberal opposition limping to the next election without the support of any serious business in South Australia. It does not have the support of the populace. What absolute rank, dishonest hypocrisy. The Leader of the Opposition does not have the courage to make the scurrilous claims made in here outside of coward's castle. It is a cowardly way to deal with an issue. I invite him to say those things that he wants to say about me outside. However, that will not happen because, as I have said before—and I say it again—he has a heart like a split pea.

INDEPENDENT COMMISSION AGAINST CORRUPTION

Mr VENNING (Schubert) (15:41): Further to the happenings during question time today, the Rann Labor government has continually dismissed calls that an independent commission against corruption—an ICAC—is needed in South Australia. It has put forward myriad reasons outlining why, the main one being the costs associated with setting up such an anti-corruption agency. The Liberal Party's plan for an ICAC estimates that the cost would be about $15 million annually. However, the state government says that our plan to set up an anti-corruption commission in South Australia will be a waste of money.

I think the money spent by the Rann government's spin team is a huge waste of money. It is an absolute disgrace, and the government should be ashamed. If there is money for the government to employ 294 staff in its ministerial offices and the Premier's media unit, compared to 191 staff employed in the ministerial offices under the former Liberal government, there is money to fund an ICAC for South Australia. Taxes have increased since Premier Rann came to office, and he has an extra $4 billion to spend every year compared with what we had just six years ago when we were in government. However, he says that we cannot afford an ICAC at a cost of about $15 million annually.

An anti-corruption commission would investigate allegations of corruption in the police, government agencies and planning authorities, and so on. It would provide transparency for all South Australians. It would deliver decisions that could stand up against public scrutiny. As my colleague the member for Heysen said earlier, for people to have confidence in our decision makers, it is imperative that they are free from corruption. As always, he or she who has nothing to hide has nothing to fear.

It is interesting to note that South Australia is one of the few states and territories that does not have an independent body to investigate claims of corruption. New South Wales, Western Australia and Queensland all have one. Premier Rann needs to start thinking about what the people of South Australia want—their tax dollars spent on massive spin teams or an independent body to investigate claims of corruption—because, come 2010, he may find that he has been mistaken in his assumptions about how important South Australians rank this issue.

The State Coroner, Mark Johns, this week backed up our plan to review the Police Complaints Authority under our model for a proposed anti-corruption body. Following his investigation into the death of Christopher Stuart Wilson, he handed down a recommendation that the secrecy provisions in the Police Complaints Act be amended so that relevant evidence can be disclosed in the Coroner's Court.

Last year, when Ken MacPherson retired as auditor-general, he called for an independent commission to be established to deal with corruption—and we were never fans of his. These are

two men of notable standing in South Australia, and they are calling on the state government to introduce an anti-corruption commission. However, all Premier Rann and his government appear to be concerned about is the cost—'dollars', 'funding', however, you put it, it means the same.

What it boils down to is that Premier Rann prefers to spend money elsewhere: on his spin team. He chooses to mesmerise people, not show them that all in government is honest, professional and straight. The state government has collected $30 billion in state taxes since being elected to power in 2002, including a record tax take of an estimated $3.4 billion this year. That is a huge amount of money by anyone's standards.

It is not right that taxpayers' funds are being spent on public relations outfits and spin teams, which are only there to try to make the government look good and cover the truth. An ICAC, on the other hand, will ensure that corruption is investigated immediately, efficiently and in fairness to all concerned. The fact that we have an ICAC will keep the outfit honest and certainly will be a huge incentive to those who may think about straying off the track. It is not hard to see which option I think the people of South Australian would want.

It is just hard to believe that the Premier and his government are too oblivious to see it. I think that it is naive in the extreme if the government thinks that there is absolutely no corruption within its operations and also if it thinks that the arrangements it has in place—the Auditor-General and the Police Complaints Authority etcetera—have a blanket process to detect it. So, cut your extravagant PR spin-team outfit by half and, with the money saved, set up an ICAC. We on this side strongly believe that, if you have nothing to hide, why do you fear it?

WATERFRONT DISPUTE

Ms BEDFORD (Florey) (15:46): I begin this contribution to commemorate the 10th anniversary of the battle for the docks with the words of Paddy Crumlin, MUA National Secretary, who said:

> In the middle of the night, with their guard dogs and balaclavas, they came. 2,000 wharfies had been illegally sacked nationally. Scab labour (mercenaries trained in Dubai) was brought in by buses with blacked out windows.
>
> Fighting both Patricks and the Howard government, the MUA entered into the largest industrial dispute this country has ever seen. There was Peter Reith on national television, advising that you had been sacked.
>
> But the trade union movement rallied and as a result of people sticking together and community support, the MUA won.

The words of solidarity became a national rally cry: 'The workers united shall never be defeated' and 'MUA here to stay'.

They were truly incredible times. Tens of thousands of Australian workers formed pickets in support of the more than 1,300 wharfies sacked at Easter 1998 from 17 Patrick Stevedore run wharves. Anyone who was there, along with the hundreds of thousands who watched this page of Australian history unfold on national television each night, will never forget the sight of the guards, some with snarling dogs, beside the fortified gates of Webb dock, where a non-union workforce, linked with the National Farmers Federation, secretly trained in Dubai under the directions of a former SAS operative, were supposed to take over the jobs of unionists. Patricks had created shell companies to employ the unionists so that it would be easier to sack them. In an article by Russell Robinson published in *The Advertiser* on 5 April the story unfolds:

> Federal government involvement in the bizarre scheme was suspected.
>
> Just before the 7 April dead-of-the-night sackings became public, the then workplace relations minister, Peter Reith, rose in parliament and declared: 'Our government promised it would fix up the waterfront, its rorts, its inefficiencies and its archaic work practices. And we meant it.'
>
> With that, he welcomed the sackings and promised $250 million to fund the redundancy payments.

Nationally, seven weeks of mass protest followed, ending the following month in the Federal Court.

Julian Burnside acted for the MUA, and Patrick was ordered to reinstate the workers after which their enterprise agreement was renegotiated. Over 600 workers were made redundant and casualisation of the workforce followed. Pending legal actions were dropped. Patrick had spent $58 million in the fight, including $8 million in legal costs. Former MUA chief, John Coomb, became more than a national leader during the dispute. His fight with his then nemesis, Chris Corrigan, the company chief who had brought this struggle on, became a turning point in Australian industrial history. Ten years on, Mr Coomb said that he and Mr Corrigan patched things up and got back to a working relationship very quickly, simply because they had to.

Another key figure was the then assistant secretary of the ACTU, Greg Combet (now MHR for Charlton). I quote his vivid memories of the events:

> I received a telephone call at about 11 pm, I think it was, with reports that balaclavad security guards with attack dogs had come onto the waterfront and that the employees had been locked out. So, it was pretty shocking news but we knew something was coming and I in fact went back to bed because I knew that I'd need all the strength that I could get for the next day and the weeks that ensued...This was a dispute that was created and instigated by the Howard government, and when you cut away a lot of the rhetoric about the dispute, what was at the core of it was John Howard's desire to break the Maritime Union of Australia.

The 10th anniversary of this momentous dispute comes as the Maritime Union of Australia renews its call for documents withheld by the Howard government to be released so that the full story of the war on the waterfront can be told. Recently, Paddy Crumlin said:

> While the defeat of the Howard government last year marked the end of the national attack on Australian workers, questions remain about the role elected representatives played in breaching federal laws. Australian taxpayers funded reports to the tune of $1.5 million, which could conclusively reveal the extent of the Howard government's involvement in the Patrick dispute.

That is the topic that remains clouded—just what was the role of the Howard government in this tumultuous event? Mr Coomb strongly believes that Mr Corrigan was lured into this course of events by the federal government's promise of financial incentives.

Whatever the deal, it remains a secret. No-one knows how much of what happened was Mr Corrigan's idea. In the legal battle to return order, documents came from a whistleblower and the contents of those documents were never disputed. Today, I support the call for the matter to be settled and for the release of the report commissioned for the Howard government by consultant Dr Stephen Webster in 1997. Seconded from Pratt Industries to work for John Sharp (the then federal transport minister) and Peter Reith, Dr Webster led a project team with the brief to provide advice on waterfront reform. Under the Labor governments of Hawke and Keating, and in the interests of boosting productivity, the MUA had already made major concessions—around 4,000 jobs had gone and $200 million in savings had been made.

Time expired.

THE OTHER SIDE

Mrs PENFOLD (Flinders) (15:51): The commemoration of ANZAC Day will have special significance this year for all those people connected with the HMAS *Sydney* tragedy since its recent discovery off the coast of Western Australia. It will evoke happier memories for those involved with the launch of a self-published book entitled *The Other Side* by Alex Wilson, which I now draw to the attention of the house. Alex recorded his experiences as a general hand in the RAAF in the Second World War in the north and west of Australia, New Guinea, the Philippines and, finally, on the island of Mindoro. Alex was mainly engaged in surveying for airfields and access roads. His last posting was with the Third Aircraft Construction Squadron. His laconic wit is typically Australian, as is his account of leaving Wyndham for Drysdale. In his book, Alex said:

> We took off from Wyndham about 2pm...As we were all in the one compartment, busy talking and looking out the window, I could see all that was going on. I don't know if these planes had automatic pilot or not because our pilot started reading a book...About two hours later, he finally finished reading the book, looked at his watch and said, 'Hells bells! We should be there by now. All of you see if you can see a small clearing below.'

The clearing was not sighted, but they did get to Drysdale the next day. They had no transport at Drysdale, therefore the recognisance of a suitable spot for an airstrip was all done on foot with the help of local Aboriginals who acted as guides. Alex says that the local people had a very fun-loving nature. When the party came to a river and the guides were asked whether there were any crocodiles, they assured them that the only crocodiles would be 'little fellas' that would not hurt them. So, they stripped off and dived in. Alex said:

> Those little buggers waited until we were under the water, then dived in. One came up behind me and grabbed my leg...Next thing they surfaced laughing their bloody heads off.

Wireless was an occasional break in the evenings, and a few times they heard Tokyo Rose. Alex said:

> ...a renegade American broadcasting from Japan and lo and behold she said that the small garrison at Drysdale River had been wiped out by a Japanese commando unit which had managed to land from a submarine.

The risks that men took came out in his description of their departure from Drysdale in an Avro Anson stripped down for use as a courier plane. Alex said:

...headed for that 300 foot hill in front of us, we must have been overweight as we had used up the entire runway still on the ground. We were going flat out through small bushes on the approach way, collecting leaves as we went. Finally, she lifted off and the pilot had to bank quite steeply to avoid the hill. Well, the tree tops were brushing our belly for what seemed like minutes, long ones at that, and my belly was where my mouth usually was.

Next day, they heard that the Japanese had bombed Drysdale killing several of their Aboriginal friends and a missionary. At a site near Yirrkala, one of the group constructed an oven from a termite mound, allowing them to cook bread and other delicacies that were not in the rations with which they were issued. Departing Sydney on the *Van Der Lin* (in which the army had refused to sail), Red Cross women gave each of them a little white comfort bag consisting of a woollen balaclava; a pair of long, heavy woollen socks; and a very long woollen scarf. He said:

Our movements must have been a well-kept secret because we were going to the blasted Tropics! We had to sleep shoulder to shoulder, head to toe, 550 men in the bloody hold of this ship.

After active service in New Guinea, Alex's company went with American forces to Morotai, landing under fire from enemy planes, and eventually to Mindoro, having their first taste of Kamikaze pilots on the way and again landing under fire.

Ignorance about Australia was brought out in Alex's scathing comment: 'The Yanks, well the ones I met, thought we were all black and that kangaroos were man-eaters.'

Their task at Mindoro was to build a landing strip in five days to take transport planes, a job that the top brass thought was impossible. If the strip was not completed in the time limit, the men were told to abandon the project and join Filipino guerrillas in the hills, provided they could get past the Japanese. Alex commented, 'We made the deadline despite the bombings and lack of sleep.'

I quote some lines from Alex's poem 'Nowhere to Run and Nowhere to Hide', describing that feat:

Then the bombs started falling and the shrapnel flying

And close by the cry of a young man dying

And I prayed, dear Lord, please save my hide.

I have nowhere to run and nowhere to hide.

The sky is on fire from our shells screaming back

But their mission is suicide and they fly through the flak.

TAXIS, COUNTRY

Ms BREUER (Giles) (15:57): I rise today to respond to some comments from the member for Stuart yesterday, and it is always a pleasure to respond to the member for Stuart's comments. We have many things in common. We share most of the state with our electorates. Of course, my electorate is bigger than his, as I keep telling him. But we do have a lot in common.

Yesterday the member for Stuart spoke on country taxis, and I am pleased to report back that there have been some quite significant changes to the system since the letter that the member for Stuart quoted from was written, which was some six to eight months ago.

I also received at the time a number of petitions, and I received a letter from Chris Brougham, who owns Des's Cabs in our part of the state. I also had a lot of constituents contact me at the time, because they had been told that they were not going to get their vouchers. This is people with disabilities, and pensioners who had taxi vouchers were told that they would not be honoured.

This was quite distressing at the time, because I was very concerned, and I wondered what the Minister for Transport was doing. However, one call to the Minister for Transport and within about two hours we started to resolve the problem very, very quickly. I pay credit to the Minister for Transport; he is always very, very good if you contact his office about these issues.

The member for Stuart was talking yesterday about the fact that the vouchers were not being honoured, and also that there were different rules for country taxis and that there was a lot of discrimination against country taxis. Just as some background, can I say that the Passenger Transport Act 1994 recognises country taxis, and vehicles in country regions are recognised as taxis where they are issued with a licence by the local council. The act recognises that councils have the power to make by-laws under the Local Government Act 1934 to license taxis outside metropolitan Adelaide, if they choose to do so.

The Passenger Transport Act protects operators with a taxi licence by stating that only those with a licence can call themselves a taxi. The passenger transport legislation also provides, for areas where council does not license taxis under by-laws, for the Department for Transport, Energy and Infrastructure to grant approval to operators to use a taxi meter, have a roof sign and ply for hire from hail or rank, but not use the word taxi because they do not have a licence.

This arrangement had not proved to be a significant issue with regional councils until recent years, but in recent years regional councils have decided to either repeal their by-laws or they have simply allowed them to lapse. This has created a problem for existing country taxi operators who wish to retain their business name and their label as a taxi.

The present situation arose where regional councils chose not to use these by-law making powers to license taxis. The operators wish to continue to be called taxis—and this is one of the issues that the member for Stuart talked about—and not be accredited in a generic category of non-metropolitan small passenger vehicles with approval to operate a taxi-type service.

The category of accreditation is being created specifically for country taxis at present, not licensed by local government within the passenger transport legislation. The state government is presently drafting regulations to recognise country taxis in their own right, where councils do not license them. In the interim, operators of country taxi services are temporarily exempted in areas not licensed by councils from the prohibition in the act—and the prohibition, of course, is not being able to use the word 'taxi'. So I am very pleased that we have done something, that we have moved on this and that action is taking place. I can also say that all the vouchers were paid or were honoured. Originally people were told that they would not be; but they were.

I particularly want to congratulate our country taxi services on the excellent service they provide. Drivers are a pleasure to be with; they are always friendly, they speak English, their taxis are relatively clean, and the drivers know where they are going and what they are doing. However, in the last few days I have had the opportunity to use many taxis in Adelaide and I cannot say the same standard applies to taxis here. I am shocked at the decline in taxi services in Adelaide; I have not used them for a number of years, but I have been appalled at the service I have received over the last few days. The taxis smell and are dirty, and I have great trouble with the drivers—who are often rude and obnoxious, who have difficulty understanding what I am saying, and who have no idea where they are going.

I think it is time that the Adelaide Metropolitan Taxi Service smartened up its act and did something about it. Perhaps because of our employment situation they are not getting drivers of the calibre they had a few years ago, but the service is not good enough. What do our tourists think?

Time expired.

WORKERS REHABILITATION AND COMPENSATION (SCHEME REVIEW) AMENDMENT BILL

In committee (resumed on motion).

(Continued from page 2748.)

Clause 24.

Mr HANNA: One of the criticisms I have already made is that the government is bringing in this new section 43, 'Lump sum calculation', without (as far as I am aware) specifying precisely what guidelines are to be used to calculate whole body impairment. Can the minister outline specifically what will be used and when it will be implemented?

The Hon. M.J. WRIGHT: The guidelines will be based on the AMA guidelines, and will be similar to what exists in other jurisdictions. In coming to those guidelines, I will consult with the AMA as well as with the unions and with employers.

Mr HANNA: One of the new provisions being brought in by this government amendment is a new section 43B. This is described as a 'no disadvantage' provision. That suggests that the worker will not be disadvantaged by this new calculation yet, as I have already pointed out, there are at least two circumstances where workers will, quite clearly, be disadvantaged by the new proposal. The first is where a worker falls under the threshold of 5 per cent that the government insists upon, and the other, where there is one of those illnesses or injuries that is off the maims table—in other words, one of those items such as disfigurement or injury to the digestive system that is not specified in the current or incoming schedule 3.

My question really is: how you can you possibly say that this new provision is truly a 'no disadvantage' provision when workers will, in fact, be disadvantaged by it?

The Hon. M.J. WRIGHT: The 'no disadvantage' is for total loss, or total loss of function, based on the existing maims table. Other injuries will be compensated under AMA guidance.

Mr HANNA: One thing I have not yet worked through (it has been impossible without the guidelines) is the situation where there are several injuries, each of which is less than 5 per cent whole body impairment in itself. So, if a worker suffers an injury to a hand, a foot and their neck, each of them less than 5 per cent whole body impairment, what is the result? Does it end up being nothing or is there an accumulation?

The Hon. M.J. WRIGHT: If it is from the same trauma, the same injury event, it would be dealt with cumulatively and within the guidelines. That is the advice I have received.

Clause as amended passed.

Clause 25.

Mr HANNA: I move:

Page 31, after line 14—Insert:

(7a) Section 44—after subsection (7) insert:

(7a) For the purposes of this section, a person with a physical or mental disability under the care of the worker (and dependent, at least to some extent, on the worker) will be entitled to the same compensation under the section as the compensation payable to a dependent child (having regard to the extent of the person's dependency and on the basis that a reference in this section to a dependent child will be taken to include a reference to such a person).

The issue here relates to compensation for a worker's family when in fact they die as a result of a work accident. The current arrangements are that the spouse—or domestic partner, as we now define people—and dependent children are eligible for compensation. What I am suggesting with this amendment is that a person with a physical or mental disability, under the care of the worker and dependent, at least to some extent, on the worker, should be entitled to the same compensation as a child of the worker.

There will not be very many of these cases. We know that there are a number of workplace deaths each year—perhaps a couple of dozen each year—and in most cases the provisions relating to partner and children would cover the relevant people, that is, those who are left behind in the aftermath of a workplace death.

I can foresee, if it has not happened already, that there will be dependent adults—for example, an adult child with a mental disability under the care of an injured worker—and the loss of income from the death of the worker will have a severe impact on the care for such a person. So, why not be compassionate and just slightly extend this to dependent adults, as I have described?

The Hon. M.J. WRIGHT: The government does not support the amendment. The proposed amendment has the effect of creating another category of claimant who may not be a spouse, domestic partner or child of the worker. The government is opposed to this, as a comprehensive coverage already exists under the Workers Rehabilitation and Compensation Act. So, although the member for Mitchell argues. 'Why not expand it and show some compassion?' we think that comprehensive coverage already exists under the Workers Rehabilitation and Compensation Act.

Mr HANNA: Clearly, we do not see eye to eye on this, but I think it is a really important provision. It will not have any significant impact on the scheme, because the number of people this is going to catch will be extremely small. We know that the Premier has to take ultimate responsibility for this. I am not directly having a go at the minister here, although he is willing to stand up and carry the can for his Premier. I think it is really heartless if Mr Rann comes in here and says that, if a worker dies in the workplace, we will give some compensation to his wife and children, but that an adult child who is mentally incapable, with disabilities, should suffer and have nothing. I think we need to put this to the test.

The committee divided on the amendment:

AYES (2)

Hanna, K. (teller)	Such, R.B.

NOES (40)

Atkinson, M.J.	Bedford, F.E.	Bignell, L.W.
Breuer, L.R.	Caica, P.	Chapman, V.A.
Ciccarello, V.	Conlon, P.F.	Foley, K.O.
Fox, C.C.	Geraghty, R.K.	Goldsworthy, M.R.
Hamilton-Smith, M.L.J.	Hill, J.D.	Kenyon, T.R.
Kerin, R.G.	Key, S.W.	Koutsantonis, T.
Lomax-Smith, J.D.	Maywald, K.A.	McEwen, R.J.
McFetridge, D.	O'Brien, M.F.	Pederick, A.S.
Pengilly, M.	Piccolo, T.	Pisoni, D.G.
Portolesi, G.	Rankine, J.M.	Rann, M.D.
Rau, J.R.	Redmond, I.M.	Simmons, L.A.
Snelling, J.J.	Stevens, L.	Venning, I.H.
Weatherill, J.W.	White, P.L.	Williams, M.R.
Wright, M.J. (teller)		

Majority of 38 for the noes.

Amendment thus negatived.

Mr HANNA: I have a question for the minister. The provision before us concerns weekly payments of compensation where a worker has been killed. Obviously, there will be many situations of this nature where a partner and children are left with a sudden drop of income. I question why this provision was not made subject to the provisional liability provisions that have been implemented for the income of the workers themselves that the government has brought in earlier.

It just seems to me that, if anything, the partner and children of a deceased worker will probably be in even more dire straits than a worker who is awaiting the outcome of a claim. Usually workplace deaths are pretty clear cut. If it is in the workplace and there is a death, you do not have to argue about how it occurred or the extent of injuries.

The Hon. M.J. WRIGHT: This subject of provisional liability was copied from the New South Wales model. To the best of my recollection, I do not think that provisional liability operates for death in the New South Wales system. I am happy to check that, but I do not think that it does.

Mr HANNA: I just want to make one other pertinent comment when we are dealing with the difficult issue of workplace death. I will not go into the issue of industrial manslaughter: I am a proponent that that is an offence which actually should be on our statute books as a discouragement of work practices which produce such a degree of danger in the workplace that people end up dying.

However, I do want to address the issue of suicide of those on work injuries. It is not a straightforward issue, and it is certainly not irrelevant here because, even though the provision—it is fair to say—was designed for people who are killed on the spot in the workplace, we have a number of WorkCover income maintenance recipients who ultimately suicide. When one looks at the causes, very often, I would suggest, they can be traced back to the workplace injury and all the consequences of that: chronic pain; difficulties in relationships and social life arising from the injury; psychiatric sequelae, that is, consequences of the injury including depression, feelings of helplessness and so on, feelings of anger and frustration—sometimes directed at the claims manager, for good reason, or maybe not good reason. Ultimately all these things can be traced back to injury in the workplace.

I simply put the query that these provisions possibly should be applicable to those who suicide as a result of a work injury where that causal link can be shown. Interestingly, WorkCover's own statistics about known suicides seem to suggest that there is a much higher rate of suicide among WorkCover income maintenance recipients than in the general population. For the reasons I have expressed, one can readily understand that. So, it is a serious issue. It may not affect a huge number of workers and families but, for those it does affect, it is an absolutely critical issue. I have a lot of sympathy for the families of those who are soldiering on after the injured worker in their family has taken their own life.

The Hon. M.J. WRIGHT: The question of course relates to suicide, and the member made the point, amongst other points, that it could be due to workplace injury, chronic pain, difficulty with relationships and depression. I understand that if a worker suicides due to psychiatric disability, say, depression, it may be compensable.

Clause passed.

Clause 26.

Mr HANNA: I have a similar question to the one I raised on the last clause, particularly about counselling services and funeral benefits. I am not going to make a big deal about this, but I hope that the minister, using all the power of persuasion he has within the Labor leadership group, has a good look at the possibility of provisional liability for funeral benefits and counselling services. It seems to me that this is a classic case where you need those payments and things such as counselling upfront. You do not want to be waiting for months while insurance loss assessors work out exactly how the death took place and wait for a coroner's report, etc. It is the sort of thing where you want a payout quickly in the same way that I referred to compensation payments for remaining family members.

The Hon. M.J. WRIGHT: Provisional liability is all about rehabilitation and getting people back to work. It is about early intervention. With regard to these payments that the member is concerned about, whether it be counselling or funeral costs, I would be happy to raise that with WorkCover and ensure that these payments are made as speedily as possible.

Clause passed.

Clause 27.

Mr HANNA: I move:

Page 35, after line 10—Insert:

(2a) Section 46(3)(a)—Delete 'two weeks' and substitute:

4 weeks

(2b) Section 46(3)(b)—Delete paragraph (b) and substitute:

(b) if the period of the incapacity is more than 4 weeks—for the first 4 weeks of the period of incapacity.

(2c) Section 46(4)—Delete 'twice' and substitute:

4 times

This is essentially to place a bit more of the cost back on employers where there are actually injuries at work. I made the point earlier that in one sense, the economic sense, this is all about a choice about who bears the cost of work injury. So, when there is time lost from work and there are lost wages, who is going to bear the cost of that? Where I am coming from is that in a no-fault scheme it certainly should not be the injured worker. Another option is to pay from the money which is derived from all the levies from all the employers in South Australia.

The other option is to look at the particular employer where a work injury occurs and ask them to pay, in insurance terms, what is essentially an excess payment—in other words, on top of their levies, to pay something towards the immediate cost of the work injury. That already happens in the legislation. Employers have to pay the first two weeks of income maintenance. I am simply suggesting that this be extended to four weeks, and this would have a substantial savings effect for the scheme. It would mean that, instead of all employers collectively through their levies paying for that third and fourth week off work, it is the employer who has a workplace where there has been an injury who would end up footing the bill for those third and fourth weeks of income maintenance, if indeed a worker is off work for that long.

Of course, there is a very good spinoff effect here, and that is that an employer is going to redouble their efforts to get a worker back to work in the first couple of weeks, which is one of the goals we have been talking about, not only for the last 20 years but particularly since the government came up with these proposed amendments.

The Hon. M.J. WRIGHT: The government opposes this amendment. We say that this is an unwarranted and direct cost shift to employers. In addition, we proposed in the original amendment bill to give employers an incentive for early reporting of injuries by waiving their employer excess. This amendment, rather than giving employers a reason for early reporting, punishes them for no good reason by doubling their excess. Requiring an employer to pay the first

four weeks of income maintenance would also have the potential to reduce contact between the injured worker and WorkCover, with possible adverse effects on their rehabilitation and return to work. I think we all agree that it is important that we start rehabilitation as quickly as possible and try to get people back to work by starting that rehabilitation early.

Mr HANNA: In response to the minister's remarks, I point out that I am actually not doing anything here to change the provision in clause 27, which the government wants to bring forward, which gives a free go to employers where there is a very prompt reporting of the work injury via the claim. So, by all means, keep that bonus to employers, but I am saying that the excess should be greater.

In fact, if you think of the psychology of it, the greater the excess, if you leave the bonus in there for immediate reporting, the employers will save even more. So, on the government's own rationale, the employers will have an even greater incentive to have injuries reported immediately.

Secondly, it is bitterly ironic that the reason why the government is enforcing these step-down provisions in relation to income maintenance for workers is it says that the psychology is that there will then be an incentive for workers to go back to work more quickly, whether or not they are injured. However, the government does not want to apply the same psychology to employers by saying, 'Gee, you will have to pay four weeks' income maintenance if the worker is off for that long, so you had better be motivated to get them back to work sooner than two weeks.' That is the psychology behind this amendment, and there is an element of hypocrisy in rejecting this.

Dr McFETRIDGE: Has the member for Mitchell done any costings on this change for business and the savings for the scheme? It seems to me, having run a small business, that it would be a very small incentive but a very large impost on running the business if this was to occur, because it is a no-fault compensation scheme.

Mr HANNA: To take the last point first, it is a no-fault compensation scheme. What that means is that we do not necessarily look at what caused the work injury. However, that is a separate issue from the excess that is paid by businesses. That has been in the scheme for a long time, for two reasons. One is the cost saving to the scheme; in other words, it is accepted in the current scheme that there is an element of cost shifting to employers rather than having all employers, even those without injury records, paying for the first couple of weeks of income maintenance per claim.

I am proposing to extend that, and I suppose the way to calculate it (I am afraid it is the minister, not I, who has these figures) would be to look at the number of claims which exist after two weeks and the number of claims which exist after four weeks; those claims which are current for the third and fourth weeks. I am not sure of the number, but I suppose it would probably run into the hundreds of workers who are off for at least two weeks—or, in fact, at least four weeks—and you would then work out how much employers are paying for the first two weeks, and I suppose you could double it to get a rough figure of savings to the scheme.

However, I acknowledge that for individual employers it means that, instead of paying the first two weeks for a worker who is off, they would be paying the first four weeks. I understand the pain of paying four weeks of a worker's wages when, in fact, they are not there to do the work, but the point is that that is a lot less pain than what the injured worker is facing if they have an injury that is serious enough to warrant their being off for four weeks.

Amendment negatived; clause passed.

Clause 28 passed.

Clause 29.

Dr McFETRIDGE: I have a couple of issues that I ask the minister to explain. How will the scheme benefit from non-recovery when no claim exists? When no claim is found to exist, these costs are unrecoverable unless the worker is proved to have acted dishonestly—which, in practice, is a very high burden of proof. Provisional liability is intended to facilitate early medical and rehabilitation action when claim determination is delayed, which is commendable where an actual claim exists, but this is pointless when no claim is found to exist.

The Hon. M.J. WRIGHT: These cases will be few and far between. I think I said during an earlier part of the debate that about 97 per cent of claims are accepted. However, what this is all about is rehabilitation and getting people back to work quickly.

Mr HANNA: I was looking at new section 50I, and thinking of the WorkCover ombudsman's right to review discontinued payments, but the payments are discontinued when there is a pending resolution of a dispute. I see that that, in fact, is not listed in new section 50I. Can the minister just confirm that?

The Hon. M.J. WRIGHT: Yes, that is correct.

The Hon. S.W. KEY: My question is very similar to the one asked by the member for Mitchell. Will the minister elaborate on section 50I 'Status of decisions'? The section says that the following decisions under this division are not reviewable. Could the minister explain why that would be the case?

The Hon. M.J. WRIGHT: The advice I have received is that the provisional liability is getting payment under way quickly (as we have talked about previously) and, if there is a dispute, the worker can make a claim and then dispute that in the dispute resolutions system.

The Hon. S.W. KEY: I refer to section 50I again. Some amendments have been made regarding the period of notice which appears earlier in the bill. Under this particular clause, which is insertion of part 4 division 7A, could the minister take us through the amount of notice the worker will get, when, for example, a decision is made to make a provisional weekly payment of compensation or a decision is made not to make a provisional weekly payment of compensation?

The Hon. M.J. WRIGHT: Under the provisional liability, payments must start within seven days, unless there is a reasonable excuse not to do so.

The Hon. S.W. KEY: That is good. I am pleased to see that a worker will be paid within seven days, but what about when a decision is made not to make a provisional weekly payment? As a result of amendments, some changes have been made concerning the period of notice in the bill and I would like some clarification on when a worker will find out that they will not receive any more money.

The Hon. M.J. WRIGHT: I am not sure whether I have enough detail for the honourable member, but she can let me know. As I said, the payment must start within seven days. If that does not occur, the worker would be advised and then the worker could make a claim.

The Hon. S.W. KEY: I am sorry to belabour this point. My earlier point in relation to section 50I was that these decisions are not reviewable. The minister has certainly answered in relation to section 50I(a). However section 50I continues:

(b) a decision not to make a provisional weekly payment of compensation after it is established that there is a reasonable excuse under the provisional payment guidelines;

(c) a decision to discontinue weekly payments of compensation under section 50C or 50F;

Although I am heartened to hear that there is a seven day notice period for when people will get paid, what most injured workers would be more concerned about is what sort of notice would you get if you were not going to be paid, because, particularly if you are the breadwinner of the family, you would want to know fairly smartly (I would have thought) that there would not be any money coming in.

The Hon. M.J. WRIGHT: I will come back to the member for Ashford on that. Perhaps I can do that after the dinner break.

The Hon. S.W. KEY: Thank you, minister.

Clause passed.

Clause 30 passed.

Clause 31.

Dr McFETRIDGE: Under this clause, the original subsection (6a) will be deleted and substituted with new subsections (6a) and (6b). Subsection (6a) states:

The corporation may dispense with the requirement under this section.

However, in new subsection (6b) a self-insurer seems to be discriminated against in this case. Why are self-insurers being put in a separate category and having to have different requirements placed upon them?

The Hon. M.J. WRIGHT: It is the status quo for the self-insured but some expanded powers for the corporation.

Clause passed.

Clause 32.

Mr HANNA: I move:

Page 39, after line 18—Insert:

(2) Section 53—after subsection (8) insert:

(9) If the claim of a worker is rejected, the worker is still entitled to the reimbursement of any costs reasonably incurred by the worker in providing a certificate under section 52(1)(c) or any other medical evidence required by the corporation in connection with the claim unless the corporation believes that the worker has acted dishonestly in making the claim or providing information for the purposes of this division or any other provisions of this act (and a liability to make a reimbursement under this subsection will be taken to be a liability to pay compensation for the purposes of the other provisions of this act).

One issue that has come up from time to time is where a worker has been injured and there is no question that they have been injured. In order to advance their claim, they or their representatives have sought medical reports to establish the extent of the injury, and so on. Ultimately, it may be that, for some legal reason (or some technical reason, one might say), the claim is rejected. It may be that, for example, the injury occurred while the worker was driving, and there is a dispute about whether or not the driving took place as part of the worker's duty. If it did, it would be compensable; if it did not, it would not be compensable. Nonetheless, we are left with someone who has been injured.

My concern is where costs have been reasonably incurred by injured workers to get medical reports and ultimately the claim is rejected, not because the worker has been dishonest and not because they were not injured at all, but because of the legal characterisation of the work injury—in other words, how it happened. What I am suggesting is that the cost of obtaining medical evidence should be recoverable from the scheme in any case. I stress that this is where the worker has been honest, the worker has been injured and the worker has obtained a medical report in order to establish the extent of their injuries believing in good faith that they have a claim, and then, for some legal reason, it appears there is no claim. This will not happen often, but I think that where it does happen it is only fair that the worker in that situation be compensated for medical evidence which they have obtained in good faith.

The Hon. M.J. WRIGHT: We say that provisional liability overcomes the need for this amendment. The costs of preparing and lodging a claim for compensation, including the gathering of medical evidence, have not traditionally been born by compensating authorities. There has been little evidence to suggest that these costs are problematic for workers. Nevertheless, any problems suffered by injured workers in this area should be rectified by the bill, which sets up provisional medical expenses about which we have already talked. It is not necessary for workers to make a claim in order to be eligible for provisional payments. Notification of the disability is sufficient. Therefore, it is quite possible that claimants could receive provisional payments when preparing their claim and use some of those payments to foot their administration costs.

Amendment negatived; clause passed.

Clause 33.

Mr HANNA: I believe that my amendments Nos 54 through to 62 are consequential on one decision or another that we have already taken, so I will not be proceeding with those amendments.

Clause passed.

Clause 34 passed.

Clause 35.

The Hon. M.J. WRIGHT: I move:

Page 39, lines 29 to 34—Delete subclause (1) and substitute:

(1) Section 58B(1)—at the foot of subsection (1) insert:

Maximum penalty: $25,000

This amendment reverses the proposal of clause 35 in the original amendment bill leaving section 58B(1) the same as in the current Workers Rehabilitation and Compensation Act. This means that an employer will still have to provide suitable employment and, so far as reasonably practicable, the same as or equivalent to the work they were doing prior to their injury. This amendment also inserts a penalty of a maximum of $25,000 at the foot of subsection (1) to ensure that employers comply with this section. Really, we are suggesting a strengthening of section 58B, which is an important part of the legislation, as members would be aware. We are also inserting a maximum penalty of $25,000.

Mr HANNA: My question is about the minister's amendment. It is really about the prosecution of employers for failing to comply with their 58B obligations virtually through the history of this workers compensation legislation. For those who are less familiar with it, one could simply describe it as the obligation to provide work for an injured worker. It is more complex than that, but that is the essence of it. Over the years, there has been a terrible history of employers seeking to dump workers out of their workplace, and they have been able to do so with wanton disregard for WorkCover's ability to supervise that and prosecute them for it. I doubt whether the minister could name many cases where employers have ever been prosecuted for failing to comply with their obligations to provide employment. That being the case, given that there is some generic penalty in the legislation at the moment and there has been no prosecution of this section 58B provision, what will the imposition of a $25,000 fine do if it is not going to be supervised or prosecuted?

The Hon. M.J. WRIGHT: Currently, there is no specific penalty provision. There is a general penalty, but I think he is right in regard to the lack of prosecutions. What tends to happen now is that WorkCover can penalise an employer through the supplementary levy system. What we are proposing here is that in addition to still using the supplementary levy system, if need be, there can be a penalty of up to $25,000.

Mr HANNA: I have been provided with a WorkCover document which describes the approach to section 58B. It refers to WorkCover having a six-person unit to examine referrals to WorkCover to get permission for workers to leave employment and simply go onto income maintenance.

The unit appears to have a huge workload, because I believe the number of referrals to WorkCover has increased from 1,300 a year to approximately 2,000 a year, and this is from employers essentially not wanting to continue with employment of an injured worker. I believe that a proportion of these referrals are rejected and some pressure is applied to employers.

So, it is not a case of the claims managers or WorkCover not knowing that this goes on: it is just that there is absolutely no prosecution policy. So, I ask again: you can have a $2,000 fine or a $25,000 fine, but what is the minister going to do to change the culture and actually have this enforced?

The Hon. M.J. WRIGHT: It is a fair question. I think that by the provision in itself we are sending a message to WorkCover, and also to the broader community. Having said that, that may well not be enough. I have spoken previously about another bill that we are going to be dealing with following this bill in respect of performance agreements, with which we will be ensuring that certain things are achieved.

The 58B functions sit within the agent. This function is supervised by WorkCover. It is based on Clayton's previous recommendation to WorkCover, and I think that WorkCover and the agent would know full well that the policing of 58B is a priority for this government.

Amendment carried.

Mr HANNA: My question to the minister in relation to the new section 58B concerns the wording, which I thought was different to that which is in the current legislation. Is there a different requirement for the nature of the work which an employer must provide to an injured worker? I see that the government provision insists that it be suitable employment.

We know from the definition that that includes a reference to education, training, experience and the medical capacity of the worker, but there is no requirement for the work to be comparable to the pre-injury employment. It seems to be clear that the employment offered need not be anything near as rewarding or suitable, in the usual sense of the word, to the worker.

My understanding is that the words 'employment for which the worker is fit, and subject to that qualification, so far as reasonably practicable the same as, or equivalent to, the employment in which the employee was employed immediately before the incapacity' have been deleted. This

seems to open the door for employers to abuse the provision by allotting the lightest and most meaningless tasks available in the workplace.

The Hon. M.J. WRIGHT: The member for Mitchell makes some good points, but I think he may have misinterpreted what we are doing here. We have actually deleted 58B(1) with our amendment, so that has now gone, and that means that the original wording of 58B(1) stands, which I think the member for Mitchell is probably speaking in favour of, and that came as a result of the consultation that the government held. So, just to repeat—

Mr Hanna: With big business?

The Hon. M.J. WRIGHT: No, with everybody. I do not know whether business actually support this.

Mr HANNA: I want to explain my earlier remarks. In the current legislation there are these words which provide a minimum requirement in relation to the work which the employer must offer the injured worker:

> ...employment for which the worker is fit and, subject to that qualification, so far as reasonably practicable the same as, or equivalent to, the employment in which the worker was employed immediately before the incapacity).

Existing clause 58B(2) gives some outs, and allows the excuse of not providing such work in certain circumstances. However, the problem I have with the government's amendment is that it deletes that proviso altogether so that we are left only with the minimum requirement that the employer offers what the government defines as 'suitable employment' in the new interpretation clause—that is, by reference to the worker's capacity and training and so on. It is not work which needs to be comparable to the pre-injury employment, and that seems to me to greatly weaken the employer's obligation to find work. Instead of finding work that is close to what the worker was doing before the injury it could be anything, under the fairly fluid 'suitable employment' definition.

The Hon. M.J. WRIGHT: I ask the member for Mitchell to look at the government's amendment because I think we are probably pretty close on this one, although we do not seem to be on the same page at the moment. What we are doing is deleting clause 35(1); so, we delete subclause (1) and then substitute section 58B(1), which says the same.

Mr HANNA: This is my third contribution on the clause. I do not want to pursue it; I am quite happy to go away and look at the existing 58B and look again at the government's amendment. I must admit I cannot see it at the moment, but I will have another look at it—I hope the minister will as well.

However, I must put on record the mischief I believe is being opened up here. There is an existing practice by some bad employers—which, I think, could become more rife under the wording the government is providing—where an employer recognises that there is a section 58B obligation to provide work but, in fact, wants to get rid of the worker; they do not want someone who has been injured once and who they think may be injured again. So, the employer will give the injured worker work that is the closest thing to working in a cesspool they can find. There was recently one case at an Adelaide Hills meatworks where injured workers were actually put on the job of cleaning out the animal excrement. It was the worst job in the whole place, and the employer was just waiting for the employees to leave, to get any other work, or to just quit work altogether.

That is the sort of mischief that, I think, needs to be overcome, and I will be re-examining the wording to ensure that the work that must be provided must, if reasonably practicable, be as close as possible to the pre-injury employment. That is my goal.

Clause as amended passed.

Clauses 36 to 41 passed.

Clause 42.

The Hon. M.J. WRIGHT: I move:

New clause, page 44, after line 38—Insert:

42A—Amendment of section 65—Preliminary

Section 65—After subsection (4) insert:

(5) The levy under this act is subject to any GST payable under A New Tax System (Goods and Services) Tax Act 1999 (Commonwealth) and any such GST is additionally payable by an employer.

(6) Subsection (5) does not extend to a fine imposed under section 70 or any penalty interest or fine imposed under section 71.

This amendment relates to the WorkCover levy and making sure that it is GST exclusive. It is what happens in practice, but putting it in the legislation leaves no doubt.

Amendment carried; clause as amended passed.

Clause 43.

The Hon. M.J. WRIGHT: I move:

Page 45, lines 8 to 11—Leave out subclauses (3) and (4)

This amendment is in regard to the levy cap. As members would be aware, the levy cap in South Australia has been 7.5 per cent, and I understand that we are one of the few jurisdictions (if not the only jurisdiction) that has a levy cap. It was recommended by Mr Clayton that we go to 15 per cent. Any change to this would, of course, result in winners and losers. What the government did as a result of bringing this bill forward was obviously to consult. It seemed to be a reasonably common view that, because this was revenue neutral, we were not going to be any better off going from 7.5 per cent to 15 per cent. Quite the opposite: it was better to stay with the existing 7.5 per cent, and that is what I am proposing with this amendment.

The Hon. S.W. KEY: I am very interested in this particular area because, as the minister noted, certainly recommendations were made in the Clayton Walsh review, and we end up with a bill that talks about deleting 7.5 and substituting 15. Now we have amendments moved by the minister to go back to 15. Can the minister elaborate on whether that has any effect with regard to the unfunded liability—which is a major concern to the government—and indicate the reasons for the change of figure?

The Hon. M.J. WRIGHT: It does not have an effect on the unfunded liability. As I said, it is revenue neutral, but I suppose the reason for the change with our amendment is that going from 7.5 to 15 per cent would have a pretty serious effect on some industries.

The Hon. S.W. KEY: Can the minister clarify one of the things that may be a myth? It has been said that, with regard to the levy, it is the good employers—the employers who actually look after their workers by having proper health and safety practices, as well as a compensation and rehabilitation system—who are subsidising the so-called bad employers. Is that a myth, or is it a reasonable issue to bring forward?

The Hon. M.J. WRIGHT: It is true that low-risk industries subsidise high-risk industries but, of course, individual employers can have an effect upon their levy rate through the bonus penalty system.

Mr HANNA: First, I want to clarify that I have corrected my thinking in relation to the section 85B question we were discussing earlier. I am just keeping track of it all. I turn to this government amendment in relation to levies. Why should I be concerned with the employer levies? It is a matter of fairness. I do not care whether we are talking about workers or employers: I want to see fairness and good behaviour rewarded, and bad behaviour penalised. That is already a principle in the scheme.

Industries which have a high rate of claims—whether due to a lack of care or due to the danger of the work—pay higher levies. Individual worksites with a higher number of claims lead their employers to pay higher levies, and that is as it should be. But there has always been a level of cross-subsidisation in the scheme. It means that those industries and workplaces that are relatively safe—where the employers are model employers, careful to prevent workplace accidents—are paying for workplace accidents. They are paying for some of the danger and some of the lack of care on the part of bad employers. How does that happen? For those who are less familiar with the scheme, I think I had better explain that.

We set an average levy rate—and for some time it has been 3 per cent—but those factors of industry accident statistics and individual employer accident statistics have a bearing on the setting of levies for particular businesses. So, the average levy rate, in a sense, is meaningless to individual companies or individual employers. It is simply a figure that is picked so that, in total, a certain amount of revenue goes into the scheme. In the case of relatively safer workplaces, it will be a lot less, or somewhat less, than 3 per cent, and for those industries with more claims it will be somewhat more than 3 per cent. The current limit is up to 7½ per cent, so that is a complete range.

I do not know what the lowest is but, theoretically I suppose, it could be 0.1 per cent right up to 7.5 per cent.

Lest it be thought that this is just some fancy of Mr Clayton, I point out that there was considerable history to the recommendation to increase the range of levies so that the more dangerous industries and the worst behaving employers pay relatively more, and the safer industries and the better behaving employers pay relatively less. The recommendation was made in the Stanley report (recommendation 9.29) to increase the levy cap to 10 per cent. The Mountford report, to which the minister has already referred in debate, was commissioned by the WorkCover Board, and it recommended the reduction of cross-subsidies within the levy system, which means increasing the levy cap.

The WorkCover Board 2006 proposal for legislative change recommended increasing the levy cap to 15 per cent. The Clayton report then recommended increasing the levy rate cap to 15 per cent. What I want to know first of all is: who exactly told the government that the 15 per cent cap was unacceptable?

The Hon. M.J. WRIGHT: I do not know to whom exactly I can point, but what I can say is that, as the government went through its consultation phase, there was opinion that we would be no better off going from 7.5 to 15 per cent. You are right: there is obviously a level of cross-subsidisation, whether it be at 7.5 or 15 per cent. High-risk industries are not necessarily poor performers, but they may well be. Good practices may be put in place in a high-risk industry but, because of the nature of the industry, there are still injuries.

We do have the bonus penalty system that I referred to earlier: up to 30 per cent bonus, up to 50 per cent penalty. It is on the levy, based on performance. You can make a case either way and, as the member for Mitchell has highlighted, there have been a number of recommendations in regard to going from 7.5 to 15 per cent. The government determined that it was best to stay at the existing levy rate.

Dr McFETRIDGE: The opposition certainly supports the government amendment here because we were quite alarmed that, with the rise to a 15 per cent cap, when you added on the 50 per cent levy it was quite possible for some employers to be paying 22 per cent. To me, that is a burden that many businesses just could not bear because, once again, it is a no-fault compensation scheme, and I could envisage circumstances, albeit rare, where a series of claims could be made that are not the fault of the employer.

I still have issues with this whole scheme. There are accidents and incidents that happen—and they involve a WorkCover claim because they happen at work—which are not really part of work duties, so I am pleased that the government has done this. It is interesting to note that we have a number of high-risk industries in South Australia, and we do have risky industries, according to the Clayton report. One of those is shipbuilding, and I think that, with the air warfare destroyer contracts coming on board, the industry average now is 7½ per cent.

Interestingly, though, submarines are paying 2.25 per cent. A relative of mine running a business was paying 11½ per cent under the old scheme, and I think that he would have been paying 22 per cent under the new scheme if he had not cleaned up his act; however, because of SafeWork SA and the way the scheme has the penalties working already, he has cleaned up his act and certainly now he is employing 40 people, and it is a very safe workplace. I think that he is down to 8.3 per cent now.

The scheme is working well and he was having to pay penalties there. I should say that an example perhaps of how something can happen that was not entirely his fault was that he had an employee who he understood to be quite literate and who was able to comprehend instructions given to him about working a machine. This fellow actually took off all his fingers and half of his hand on this machine because he could not read the safety instructions, even though these had been explained to him and he had indicated that he could understand. It was just one of those cases where employers sometimes end up being on the wrong side of the argument because of circumstances beyond their control.

If there were a possibility of paying 22 per cent, I think that would be totally unacceptable to business. Even at the current rate of 7½ per cent, with a 50 per cent penalty you can still be paying 11½ per cent, so it is a significant disincentive for any employer. I think that South Australian employers, through Safework SA, are doing their very best to try to do that and, with the difficulty of getting people to come to work now with the low unemployment rates in South Australia, employers are tending to look after their employees. At the same time, I think that there is enough in this legislation to make sure that irresponsible and bad employers are being penalised sufficiently.

Mr HANNA: To me, there is an air of unreality about this debate because we seem to be discussing it as if—by going with the government amendment and rejecting the original proposal they had in the bill—we are somehow lowering levy rates. With respect to the member for Morphett, it is all very well to say that this or that employer will not have to pay 15 per cent or 22 per cent or whatever but, of course, the corollary to that is that we are asking a whole range of employers to pay more. In fact, most often it is the small businesses, the small employers, who will pay more because they are often in a simple enterprise—clerical sort of operations primarily—and they are the ones who will cop it.

I just want to run through some of the relatively safe employers who government members and Liberal Party members will vote to pay more in WorkCover levies. Let us be quite clear about that: it means that instead of their paying perhaps half a per cent, they might end up paying 2 per cent because of the requirement to subsidise those who are in more dangerous fields. I think that a good example would be accounting or insolvency firms: they will not be high up the list of risk factors. Firms like Bernardi Martin, Ernst & Young, Sims Lockwood—there are a hundred of them around Adelaide—will be paying more levy as a result of what Liberal and Labor members will vote for now.

What about community groups? They are often at the lower end of the scale. Sporting clubs with bar staff, and surf-lifesaving clubs, which have a small staff and do not engage in dangerous work with machinery or mining or whatever, will be at the lower end of the scale. They will be paying higher WorkCover levies under this government amendment. Finance companies throughout the whole finance sector: BT Finance, Colonial First State, credit unions—the whole range of them will pay more WorkCover levies as a result of what the Liberal Party is about to vote for. Hotels (somewhat the darling of Liberal and Labor members usually!) will in this case end up paying more WorkCover levies, despite being one of the relatively safe industries.

Think of professionals—I will not mention lawyers, because I do not want to be accused of any self-interest—but doctors rooms and veterinary clinics will pay more (although I stand to be corrected by the member for Morphett about how dangerous the veterinary clinics might be).

Then there are non-government schools. Schools are relatively safe employers, and they will end up paying higher WorkCover levies to subsidise those in the mining and manufacturing industries. Church-based organisations such as Anglicare and the Salvation Army have most of their people in clerical or social worker roles involving counselling, talking to people, and so on. Those sorts of organisations will pay higher levies to subsidise the more dangerous businesses. Trade unions themselves will be paying higher levies as a result of this government amendment.

You can also think of a whole range of non-government organisations such as regional progress or development boards that would be paying more. Tourism businesses generally would be paying more, as relatively safe employers. Bakeries would be another example. Maybe they are more towards the middle of the range, but I imagine they would be much safer than the mining and manufacturing sectors to which I have referred.

Real estate agents; property management companies; charities such as the Cancer Foundation, Riding for the Disabled, Red Cross and so on; and human resource and recruitment companies would all be paying more. Even shopping centres managers such as Westfield would be paying more, because they are relatively safer employers and, in some cases, more careful employers than the mining and manufacturing sectors. So, there is a whole range of relatively safe employers who will pay more levy—a higher percentage levy—as a result of this government amendment.

It is all very well listening to the big business end of town. Yes, Labor Party: listen to big business. Yes, Liberal Party: listen to big business. They are telling you, 'We don't want to pay this high rate of possibly 15 per cent if we are at the high end of the scale', but it means that all the other people in clerical, financial and charitable services are going to be paying more. I do not want to vote for that.

The Hon. M.J. WRIGHT: I thought I might share with the house some advice that I have. I know I am not going to convince the member for Mitchell, but I think he and others may be interested. The advice I have received is that it is estimated that the change would lead to an average increase in levies of $5,000 for approximately 4,200 business locations; no change in levies would be experienced in 9,400 locations; and an average decrease in levies of $360 would result for 58,600 locations. So there is a small benefit for many employers, but there is a large hit for some employers. As I said previously, you have cross-subsidisation under the current system. If

you went to 15 per cent you would still have cross-subsidisation. It is revenue neutral and, on balance, the government determined to come forward with an amendment.

Amendment carried; clause as amended passed.

Clauses 44 to 46 passed.

Clause 47.

Dr McFETRIDGE: Will the minister explain how the transition arrangements will work so there is not going to be a double whammy effect on businesses?

The Hon. M.J. WRIGHT: The legislation is flexible and it sets up payment regimes so you can pay in instalments. So, by going to a whole new system of levy payment in advance, as I say, the legislation is flexible so that if, for example, a company is paying 12 months, it can elect to pay on a monthly basis in that transition phase.

Dr McFETRIDGE: If there are overpayments, is WorkCover Corporation compelled to pay back those overpayments, or are they going to be offset against future levies?

The Hon. M.J. WRIGHT: They will be offset. I should also say in regard to the transition phase that this will all be done in consultation with the industry.

Clause passed.

Clauses 48 and 49 passed.

New clause 49A.

The Hon. M.J. WRIGHT: I move:

Page 50, after line 21—Insert:

49A—Insertion of section 76AA

After section 76 insert:

76AA—Discontinuance fee

(1) An employer who—

(a) ceases to be registered under section 59 (including in a case where the employer is then registered as a self-insured employer under section 60); or

(b) ceases to be registered under section 60 (but not including in a case where the employer is then registered under section 59),

is liable to pay to the Corporation a fee calculated in accordance with the regulations.

(2) A fee payable under subsection (1) is a debt due to the Corporation and may be recovered by the Corporation in a court of competent jurisdiction.

This is an exit fee for self-insured employers. The regulation would operate in much the same way as practices that are currently applying, so we see some sense in putting in exit fees with regulation.

Mr HANNA: I do not think he would mind my saying this, but I met Mr Robin Shaw, of the self-insured employers association (I keep forgetting what the acronym SISA stands for). In any case, he put some very strong submissions to me on behalf of self-insured employers and he objected in the strongest possible terms to the insertion of this discontinuance fee when it was not in the government's bill. I think the minister in the course of debate has already acknowledged that there was not further consultation with the self-insured employers after the initial round of consultation leading to the bill. It is potentially a heavy impost. Who spoke to the government to say that this should be reintroduced, and why has it been done?

The Hon. M.J. WRIGHT: This is an exit fee for self-insured organisations. The regulation would operate in much the same way as current practices. We are formalising what is already in place. I understand the concerns of Mr Shaw: obviously, he has his point of view. However, what we are doing here is simply regulating what is the current practice.

Dr McFETRIDGE: Along the same lines, I have had approaches from the self-insurers and, while I understand that this is just bringing regulation into legislation, the impression I am getting is that this will be a significant disincentive to some employers to come to South Australia, because by merging with companies that are currently self-insured they will have to pay the exit fees, which I am told can be anything between hundreds of thousands of dollars and millions of dollars. Is it true that, when a company becomes self-insured, they take all the liability with them as

well? This really is a grab for cash, as it has been described by some people, on behalf of WorkCover.

The Hon. M.J. WRIGHT: Generally speaking, they take the liability with them. With respect to this regulation, I will be consulting with SISA to ensure that we get it right.

New clause inserted.

Clauses 50, 51 and 52.

The Hon. M.J. WRIGHT: I move:

Delete these clauses and substitute:

50—Amendment of section 78—Constitution of Tribunal

Section 78(c)—delete paragraph (c) and substitute:

(c) a single conciliation officer.

51—Substitution of heading to Part 6 Division 5

Heading to Part 6 Division 5—delete the heading to Division 5 and substitute:

Division 5—Conciliation officers

52—Amendment of section 81—Appointment of conciliation officers

Section 81—delete 'and arbitration' wherever occurring

52A—Amendment of section 81A—Conditions of appointment

Section 81A—delete 'and arbitration' wherever occurring

52B—Amendment of section 81B—Administrative responsibilities of conciliation officers

Section 81B—delete 'and arbitration'

52C—Amendment of section 84D—Issue of evidentiary summonses

Section 84D—delete 'and arbitration' wherever occurring

52D—Amendment of section 86A—Reference of question of law and final appeal to Supreme Court

(1) Section 86A—after subsection (1) insert:

(2) Subject to subsection (2a), an appeal also lies on a question of law against a decision of the Full Bench of the Tribunal to the Full Court of the Supreme Court.

(2a) An appeal cannot be commenced under subsection (1a) except with the permission of a Judge of the Supreme Court.

(2) Section 86A(3)—after 'reference' insert:

or appeal

(3) Section 86A(3)(a)—delete 'referred to the Court'

52E—Amendment of section 88—Immunities

Section 88—delete 'and arbitration' wherever occurring

52F—Amendment of section 88A—Contempts of Tribunal

Section 88A(b)—delete 'and arbitration'

52G—Amendment of section 88E—Rules

Section 88E—delete 'and arbitration' wherever occurring

52H—Amendment of section 88H—Power to set aside judgments or orders

Section 88H(2)—delete 'and arbitration'

This is a new dispute resolution system. The new dispute resolution structure would now comprise the following stages: conciliation, judicial determination by a single presidential member; appeal to the full bench of the tribunal; and appeal to the Supreme Court with special leave. This model that is before us and also the earlier model that came out of the review by Clayton and Walsh were certainly discussed by most of the organisations, whether they be employer or employee organisations, and there seemed to be some commonality in regard to not going with the recommendation of Mr Clayton in respect of arbitration.

Mr HANNA: I wish to express furious agreement with the minister's amendment.

Amendment carried; new clauses inserted.

Clause 53 passed.

New clause 53A.

Mr HANNA: I move:

Page 51, after line 35—Insert:

53A—Amendment of section 89A—Reviewable decisions

Section 89A(1)—after paragraph (b) insert:

(ba) without limiting paragraph (b)—a decision on a request for assistance with rehabilitation made by a worker;

I want to make it absolutely clear that, if a worker requests assistance with rehabilitation, it should be a reviewable decision. I think everyone pretty well knows what that means. There was some discussion about this earlier, but I do not think it is directly consequential: it stands by itself. This is the situation where a worker requires perhaps some material aid, or some assistance somehow with rehabilitation, in order to get back to work. We have had cases where, for months and months, the claims manager has stuffed around, or perhaps there has been a whole series of claims managers in the course of six or 12 months, and no decision has been made. We need to make it clear that this can be taken to the tribunal and a decision be made more promptly in those situations.

The Hon. M.J. WRIGHT: I oppose this amendment. We think that the current provisions are adequate. A worker can already seek an expedited decision for a rehabilitation plan.

New clause negatived.

Clause 54 passed.

Clause 55.

The Hon. M.J. WRIGHT: I move:

Page 53, line 6—Delete 'for arbitration' and substitute: for judicial determination

It is consequential to the dispute resolution system.

Amendment carried.

Mr HANNA: Why is the government not doing anything about some limit on the amount of conciliation proceedings that can take place before a review goes to judicial determination? It seems to me that, in some cases, employers have big pockets and are willing to string out conciliation proceedings. We have had cases where there have been eight, nine, 10 conciliation meetings. It seems to me that, if you have not conciliated by that time, it is time to put it to the test and have a judicial determination. Why is the government not acting on that?

The Hon. M.J. WRIGHT: It is really a matter that is up to the parties. The parties can determine if and when they think conciliation will or will not work. Really, it is for the parties to determine.

Clause as amended passed.

Clauses 56, 57 and 58.

The Hon. M.J. WRIGHT: I move:

Delete these clauses and substitute:

56—Repeal of part 6A division 5

Part 6A division 5—Delete division 5

57—Repeal of section 94

Section 94—Delete the section

58—Amendment of section 94C—Determination of dispute

(1) Section 94C(1)—Delete 'rehear the matter in dispute and'

(2) Section 94C(2)—Delete subsection (2) and substitute:

(2) However, if the amount of lump sum compensation is disputed by a worker and the amount the tribunal proposes to award is less than, or the same as, or less than 10 per cent above, the amount offered in conciliation proceedings, the worker is not entitled to costs of the proceedings under this division.

Mr HANNA: It has always struck me as strange that, if the worker challenges an amount which has been determined for section 43 lump sum compensation, if the tribunal awards less than, or the same as, 10 per cent less than the determination, then the worker does not get costs. However, if it goes the other way, there is no penalty on the compensating authority and there is no additional benefit to the worker. Clearly, this is designed to stop workers challenging section 43 determinations which are in the ballpark, so to speak, yet claims' agents or employers, particularly the self-insured employers, can challenge to their heart's content without any such discouragement of litigation.

The Hon. M.J. WRIGHT: It is all about resolving disputes.

The CHAIR: I want to make sure that all the procedures are fair. Is the member for Mitchell happy for us to continue with the minister's amendments?

Mr HANNA: Yes. I will not be proceeding with my amendment No. 68, but I will want to proceed with my amendment No. 69.

The CHAIR: That is after we have considered the minister's amendment No. 35. That is still relevant.

Mr HANNA: Yes.

The CHAIR: I think that I will put that clauses 56 and 57 as amended be agreed to, and then we still consider clause 58 separately.

Mr HANNA: Can I just have the procedure clarified then?

The CHAIR: The member for Mitchell's amendment No. 69 amends clause 58. It would still, it appears to us, apply in the light of the new clause 58. Therefore, with the amendment which we have just put and which has been carried, I am just putting that clauses 56 and 57 as amended be agreed to, and then we will deal with clause 58 so that the member for Mitchell has the opportunity to move his amendment No. 69. Is that clear?

Mr HANNA: Yes. I just point out that amendment No. 69 now has the effect of introducing a new clause, because I do not have the intention of deleting clause 58, which the minister has just successfully inserted.

The CHAIR: In that case, we will deal with new clauses 56, 57 and 58, and the member for Mitchell will need to move his amendment in an amended form, that is, to introduce new clause 58A.

Amendment carried; new clauses inserted.

New clause 58A.

Mr HANNA: I move my amendment in an amended form so as to insert new clause 58A:

58A—Amendment of section 95—Costs

Section 95(5)—delete subsection (5) and substitute:

(5) A person acting as a representative of a party to proceedings under this Part cannot charge for representation at a rate that exceeds the amount that would be allowable under the relevant Supreme Court scale if the proceedings were in the Supreme Court (and any amount charged in excess of the amount that may be charged under this subsection is not recoverable).

(6) In connection with the operation of subsection (5), an award of costs under this section cannot exceed the amount that would be allowable under the relevant Supreme Court scale if the proceedings were in the Supreme Court.

The heading and the text are exactly the same as is printed in my current amendment No. 69 on file; so, we all know what we are talking about. WorkCover and the government, I believe, have taken the view that there should be a fixed-costs system in relation to judicial determinations. My submission is that that will lead to a number of unfair rulings. In some cases WorkCover will end up paying too much for legal costs, and in other cases WorkCover will be paying hopelessly poor legal costs to the parties involved. The implication of this is that it may lead to some workers being

unrepresented and, contrary to what Premier Rann consistently says about them, in fact, lawyers are rather useful when it comes to presenting a case before a tribunal.

Generally speaking (and this can be corroborated by the experience of Family Court judges), litigation usually goes much quicker when lawyers are involved rather than having unrepresented litigants. I put forward a different approach, that is, simply to limit the payment to any lawyer representing someone in judicial determination proceedings to an amount that would be allowable under the relevant Supreme Court scale as if the proceedings were in the Supreme Court. For those members who are not familiar with how lawyers charge, the most common reference point is a scale of fees which is published by the Supreme Court. It has an hourly rate and it has amounts for a different range of activities which can be carried on by lawyers. So, it is a handy reference point for just about every legal firm in Adelaide. Some will charge more; some will charge on that scale; and if you are lucky you will find some that will charge less than that scale, at least for particular matters.

What I am suggesting is putting a limit on lawyers' fees. I want to be clear about that: it is a ceiling on lawyers' fees. That means that there is some flexibility: lawyers can charge less if they want to, but it means that nobody gets to charge more than that scale of fees which is published by the Supreme Court. One good thing about that is that it puts everyone on the same playing field. Whether you are representing a worker, an employer or the corporation, you are receiving the same fees. I think that is how it should be if you want a level playing field in the justice system.

The Hon. M.J. WRIGHT: We do not support the amendment. The government supports the general thrust of the member for Mitchell's proposal but proposes to deal with the problem in a different way. The government believes that legal representatives should be held to the prescribed costs scale under the scheme and be prevented from charging exorbitant gap payments to injured workers.

We believe that the dispute process in general should be a negligible cost to workers. It is to be noted in the Clayton review that he broadly supported the WorkCover Board's submission on dispute resolution costs. Board recommendation 13.2 was to:

> ...pass a regulation pursuant to section 88G of the Workers Rehabilitation and Compensation Act to limit the amount a worker's solicitor can recover from a worker by way of costs to that amount which is payable by WorkCover to a worker under the act.

Clayton stated:

> There is a sense of justice and equity that a worker should receive the full amount of their entitlement, not an amount that is devalued through the impact of additional legal fees.

Clayton qualified his remarks by saying:

> However, the very best legal representation may involve some premium payment which a worker may be willing to bear.

The government intends to largely adopt Mr Clayton's recommendation, however not through legislation. As recommended in the board proposal, it is quite possible to limit legal fees via regulation under section 88G. That is the government's preferred option. The government intends to progress such a regulation shortly after the bill is passed. The difference in the government's plan is that, while its regulated fee limits will be based on the Supreme Court scales, they will be a lesser proportion.

WorkCover has provided advice to me that the current Supreme Court scales are regarded as excessive for the kind of preparation and representation work required for workers compensation matters and that it would be appropriate to set a lower scale, and we will be consulting in the development of these new cost regulations.

Mr HANNA: I am encouraged by those remarks to some extent, although I would challenge that matters in the Workers Compensation Tribunal are necessarily less complex or demanding of legal acumen than matters in the Supreme Court—some will be, some will not be. That is why I think there needs to be some flexibility. The important thing that I would stress to the government, if they are going to do something like this in regulation, is that it has to be equal as between worker representatives and employer representatives.

Mr Clayton referred to some ability to charge more because some workers might want to pay more for better legal representation. The point is: if you set a ceiling for all representatives then everyone is on a level playing field. I hope that the Labor government will not be, once again, sucking up to big business and allowing higher legal fees as an option, because we know who usually gets to hire the best lawyers, and that is the corporation and the employers.

New clause negatived.

Clause 59.

The CHAIR: I am going to suggest that we break now. I would point out to the member for Mitchell that he may like to re-examine his amendment 72 over the dinner break, as the first part of it is identical with the minister's amendment 38—that he may seek to move amendment 72 in an amended form in order to have the second part of his amendment 72 considered by the committee.

Mr HANNA: If I may respond to that, Madam Chair. Given that the first part of the amendment is identical to an amendment of the minister, if I simply move that amendment it is not going to do any damage if an amendment by the minister is dealt with first. In fact it might be better not to put the minister's amendment first but to put this amendment.

The CHAIR: It is not the way we work. We have to take them in order of precedence. So, if you would like to have a look at that during the dinner break, and we will go to dinner now so that you can do that.

Mr HANNA: That is fine, but what I would be inclined to do is simply move it in that form, unless there is any reason that that would be out of order, as such.

The CHAIR: We need to deal with it chronologically when we get to it, so you are not moving it now.

Mr HANNA: Yes; no problem.

The CHAIR: However, at that time your amendment will not make sense unless you seek to move it in an amended form so that you just move the second part of it.

Mr HANNA: I do not want to dispute that ruling, but it seems to me that it will still make sense even though there may have been an amendment in identical wording that has already been passed. In other words, it will not dislodge what has already gone before it.

The CHAIR: No, it will not.

Mr HANNA: Well, we are agreed on that.

[Sitting suspended from 17:59 to 19:30]

The Hon. M.J. WRIGHT: I move:

Page 54—

Lines 25 and 26—Delete 'and arbitration'.

Line 35—Delete 'and arbitration'.

These amendments are consequential on dispute resolution.

Amendments carried.

Mr HANNA: We are talking about the costs liability of representatives, and clearly there is an element of punishment for lawyers or others who do the wrong thing when representing a client and cost them money along the way. One of the things that puzzles me about the focus on legal costs is that (according to the information given) the money spent by the fund on legal costs in South Australia is actually less than that spent in other states. If that is the case then perhaps we do not need to do as much in relation to legal costs after all.

Of course, on the rare occasions when lawyers do the wrong thing we want protection for workers but, if I am right in thinking that the South Australian scheme spends less on legal costs than is spent interstate, then perhaps there does not need to be so much focus on legal costs.

The Hon. M.J. WRIGHT: Our amendment is about ensuring that there are no delays in the dispute resolution with regard to legal costs and money spent in South Australia compared to other states. It may be the case that it is less.

Mr HANNA: The other question I have of the minister about the clause is: why is it cast differently to the provisions covering lawyers appearing in the Supreme Court? It seems to me that the rules are expressed differently for matters where there has been some fault on the part of the lawyer. I wonder why there would be a difference.

The Hon. M.J. WRIGHT: The reason for that is that we are following the Victorian model with respect to workers compensation.

Mr HANNA: It is kind of amusing that we are copying Victorian provisions when we have our own existing South Australian provisions.

The Hon. M.J. WRIGHT: I am advised that the new rules are more relevant to the workers compensation jurisdiction.

Clause as amended passed.

New clause 59A.

The Hon. M.J. WRIGHT: I move:

New clause, page 54, after line 37—Insert:

59A—Amendment of section 97A—Constitution of Tribunal for proceedings under this Part

Section 97A—delete 'and arbitration'.

This is also consequential on dispute resolution.

New clause inserted.

New clause 59B.

Mr HANNA: I move:

New clause, page 54, after line 37—After clause 59A insert:

59B—Amendment of section 97B—Powers of Tribunal on application

Section 97B—After subsection (1) insert:

(1a) The tribunal should act under subsection(1) if the tribunal is satisfied that the decision-maker has not taken timely and reasonable action to determine the matter (unless the tribunal considers that there are special reasons for not acting under that subsection).

I move this amendment in an amended form. This is a fairly simple point that speaks for itself. I make the amendment in relation to current section 97B in the existing legislation which deals with the powers of the tribunal. I am simply making clear the circumstances in which the tribunal would give directions to expedite the determination of a matter. To put it more plainly, the tribunal would provide directions to expedite determinations if the decision maker had not acted in a timely and reasonable manner. That is the point of the amendment.

The Hon. M.J. WRIGHT: Existing section 97 for expedited decision making is sufficient and, for that reason, we do not support the amendment.

New clause negatived.

Clause 60.

Mr HANNA: I move:

Page 55, after line 21—Insert:

(5a) On completion of the processes under subsections (3) and (4), the Minister must provide the name and details of any person under consideration for appointment by the Governor under subsection (2) to—

(a) the United Trades and Labor Council; and

(b) South Australian Employers' Chamber of Commerce and Industry Inc,

and either of those bodies may, within 4 weeks after receiving the name and details, object to the person being recommended to the Governor.

(5b) If the Minister receives an objection within the period contemplated by subsection (5a), the Minister must consult with the body making the objection and if after consultation the body still maintains its objection and the Minister proceeds to make the recommendation, the Minister must cause a report on the matter to be prepared and have copies of the report laid before both Houses of Parliament.

I say at the outset that I have serious concerns about the medical panels and how they will work. I will have a little more to say about it when we look at the clause itself. The very concept, I believe, is flawed: the notion that one party to a dispute can choose the people who are going to decide the dispute; the people who are going to decide the dispute do not even have to listen to the other side;

and, when they make a decision, it is final and binding on the other party. It really is a complete transgression of a whole range of common law protections built up over 100 years. By moving this amendment, I think we can make it a little bit better if it does go through.

One of the objectionable points then is that WorkCover effectively gets to choose a whole series of doctors who are philosophically, or otherwise, unsympathetic to workers. Everyone who practises in the workers compensation jurisdiction, everyone who knows a little bit about it, every union advocate who has worked in the area and every employer who has dealt with the area extensively knows that there are certain doctors you go to if you want a view of a medical problem that is generous to workers or that gives them the benefit of the doubt. There are certain doctors you go to if you want a harsh, cynical view of injured workers, and there are a number of doctors in between, of course.

The use of preferred doctors because of a known predisposition to take a view about injured workers has been one of the unfortunate features of the scheme since it has existed. Of course, that applies in other relevant fields as well. When dealing with damages for motor vehicle accident claims, the same thing applies.

The problem here is that it is up to WorkCover to pick the people they want to be on the medical panel and make, essentially, a binding decision. I realise that there is a formula which is a little more elaborate. There is actually an appointed convener and deputy convener appointed by the minister. The convener will have an important role to play in each case. The members themselves will be determined by the convener of the medical panel in each case. However, when it comes to those who applied to be on the panel, that itself will greatly restrict the spectrum of views of potential members of a medical panel. All it takes is for one minister in the future to be unsympathetic to the plight of injured workers to essentially be able to stack the medical panel with those doctors who have a harsh and cynical view of injured workers, and this is what is going to happen in the future.

My amendment provides that, after the selection committee is established in accordance with regulations and nominations are sought, the minister must provide the name and details of any person under consideration to the United Trades and Labor Council on the one hand, and the employers chamber on the other hand, and either of those bodies may, within four weeks after receiving the names, object to the person.

Even that is not conclusive, but if there is an objection then the minister must consult with the body making the objection and if, after consultation, one of those two bodies still maintains its objection and the minister proceeds to make the recommendation, the minister must cause a report on the matter to be prepared and laid before parliament.

I am not actually giving the right of either the UTLC or the employers chamber to object and block nominations because, after all, in some fields of specialisation, there may be very few nominations to choose from in reality, and I understand that dilemma. At the very least there should be the right of objection if the medical provider nominated is one with a particular reputation either way.

If you give that right of objection to both the UTLC and the employers chamber, I am hoping that ultimately you will end up with medical practitioners who have a more middle of the range view of work injuries and injured workers. I have used the formal names (as one must in legislation) of the UTLC and the employers chamber, but we know that these days they are known by the flash new names of Business SA and SA Unions: they are the groups I am talking about.

At the end of the day, it is a fairly modest safeguard to be built in, so that, if there is an objection to one of the medical practitioners who was about to be nominated to the panel, if the minister feels strongly enough that it really has to be that person—perhaps because the range to choose from is so limited—then let there be some transparency. Let there be a record laid before the houses of parliament and at least there will be a public airing of the debate about that.

Quite frankly, those medical practitioners who have something of a reputation for being particularly pro-worker or anti-worker may well be put off by the process, and I think that would be a good thing. At least it will be a range of medical practitioners at the end of the day, then, who will have a middle range of views and not have a fixed view at the outset.

The Hon. M.J. WRIGHT: The government does not support the amendment. Perhaps I could speak also a little bit about medical panels because, as you said, it is a fairly big clause and one that is important to the bill. The minister would appoint a selection committee. That selection committee, for example, could be made up of: a representative of the AMA; a representative of the

medical colleges; certainly you would need an employer and an employee representative; perhaps someone from WorkCover. That selection panel, once in place, then selects the pool of doctors, and the Governor appoints the panel on the minister's recommendation.

From the pool, the minister appoints a convener and may appoint a deputy convener. The convener and the registrar appoint a panel of no less than three and no more than five doctors. We think that the proposed selection process for appointments to medical panels is transparent and adequately representative of employee and employer interests. The minister will be advised by a selection committee, as I said, on the most appropriate appointments to the panel. The selection committee will be made up of those representatives to whom I have referred, so you would already have Business SA and SA Unions playing an important role.

By the way, WorkCover does not pick the medical panels. I think that the proposal put forward by the member for Mitchell would be just a wee bit cumbersome.

Mr HANNA: I do stand corrected in that WorkCover does not pick the membership of the panels itself, but I am looking to the future where there may be a minister who wants to do a job on injured workers who is able to take the advice of either WorkCover or the employers chamber about those medical practitioners who have a particular reputation for being harsh on injured workers. They could well be the sole range of nominees for the medical panels in the future. That way, it would not even matter what the convener thought—the end result would be several medical practitioners who have that particular view.

It is very easy to see how this system can be abused, and that is inevitable as soon as you take the choice of medical practitioners away from the parties themselves. It means that whoever ultimately has control of the ministry is able to determine the flavour of medical assessments for injured workers in South Australia. I am corrected on that point, technically speaking, but I can see that this will be a very one-sided affair in the future.

Dr McFETRIDGE: Even I, while relatively new to this portfolio, understand that there is a long history of tensions between sections of the medical profession and some of the allied health professionals and WorkCover. As you have quite rightly pointed out, there are some insurance doctors and there are some workers' doctors. Are you aware of any research that has been done to give us confidence that there are enough willing participants for these panels in South Australia without having to have fly-ins and fly-outs? I do not know what will happen there. Are you aware of anything like that at all?

Mr HANNA: I am not aware of research as such. Maybe somebody has done a PhD on it, but I am really relying on anecdotal evidence. People who practise in the area all the time can give you a pretty clear idea of how particular medical practitioners will approach the issue of assessing an injured worker. There are going to be real problems in areas of fine specialty so, when it comes to the diagnosis of rare diseases and even something such as asbestosis, there are very few specialists in Adelaide who are going to be able to give a qualified opinion. Then, of those, one has to wonder how many will want to go through the rigmarole of being on a medical panel and determining the fate of injured workers' claims. So, one can be sceptical about whether this is going to work.

Dr McFETRIDGE: I have a further question of the member for Mitchell. Have you had any contact with any of the professional associations—the various bodies such as the AMA and the professional colleges (the college of surgeons and such like)?

Mr HANNA: I have not. I think that is more a question for the minister. I have a couple of amendments that ameliorate the excesses of the medical panel proposal but, really, the proposal is from the Rann government and I do not take any responsibility for that.

The Hon. M.J. WRIGHT: Even though it is not my amendment, and provided the chair is happy, I am happy to make a comment on that. It is my understanding that Mr Clayton did take some soundings from the AMA and he was assured that there is the pool of resources available in South Australia to be able to establish the medical panels. The other point I would make is that there is a similar balance selection model working well in Queensland. As members would probably be aware, medical panels exist in Queensland and Victoria, and we are picking up elements from both.

Dr McFETRIDGE: Perhaps the minister can take this on board as well, but to the member for Mitchell I say this. I am not a lawyer. My background is veterinary medicine, and I know how difficult it can be to distinguish between a medical fact and a legal fact. I know from some of the cases of animal cruelty I have been involved in that medical evidence has been presented and then

interpreted by lawyers, and one of the big issues that has been put to me by members of the legal profession is that there will be legal questions put to members of this medical panel and how will we know whether that line is overstepped? Does the member have any information with which he can enlighten the committee?

Mr HANNA: With the indulgence of the member for Morphett, I might come back to that when we are discussing the clause itself.

Amendment negatived.

The Hon. M.J. WRIGHT: I move:

Page 59, after line 9—Insert:

(2a) In addition, a medical question that constitutes or forms part of, or arises in connection with, a matter that is the subject of a dispute under Part 6A must be referred to a Medical Panel.

This clarifies the need for medical questions to be sent to the medical panel.

Amendment carried.

Mr HANNA: I move:

Page 60, after line 18—Insert:

(1a) A Medical Panel must, before finalising its opinion—

(a) furnish a draft opinion (including reasons) to—

(i) the worker; and

(ii) the Corporation or the self-insured employer (as the case requires); and

(b) provide the parties with an opportunity (over a period not exceeding a limit prescribed by the regulations) to make a submission to the Medical Panel (in such manner as the Medical Panel thinks fit) in relation to the matter.

This is the very least that we could do, I think, to soften the harsh impact of introducing medical panels. I am suggesting that the medical panel must, before finalising its opinion in the matter, furnish a draft opinion to the worker and the corporation or the self-insured employer, as the case may be, and give the parties an opportunity to make a submission to the panel in relation to the matter.

This is what we call natural justice—give the parties a chance to be heard. This is a principle that has underpinned our courts and tribunals for ages and, if the Rann government wants to come forward and make these medical panels conclusive in their determination, the very least that can be done is to apply the principle of natural justice and allow the parties to be heard in terms of what they are proposing. In other words, this group of doctors can meet behind closed doors and suddenly come out with an opinion from left field which neither the corporation nor the worker would have thought might have arisen from the evidence. So it is most unfair. It is absolutely a denial of natural justice, and I think everyone can understand that.

The Hon. S.W. KEY: Because this is such a large section of the bill, I have a number of questions. In following on from what the member for Mitchell has just said and also in relation to his amendment, I draw members' attention to new section 98B, 'Procedures', on page 56 of the bill which states:

(1) A medical panel is not bound by the rules of evidence but may inform itself in any way it considers appropriate.

(2) A medical panel may act informally and without regard to technicalities or legal forms.

To a certain extent I think this builds on what the member for Morphett was asking with regard to the differences that have certainly happened in the past and, I suspect, will happen in the future between a legal opinion on a matter as well as a medical opinion on a matter. We will get on to medical questions later on and what they mean, but the medical questions here, as I understand it, and I have spoken to the minister about this in the past, are based on the Victorian legislation, as opposed to the New South Wales legislation, with regard to a medical question. But it can include anything from injury, causation, capacity to work, return-to-work plans and suitable employment.

As much as I know there is a lot of fantastic medical personnel out there, I would be very interested to know whether they can make informed decisions on not only legal matters and

matters of fairness in a legal sense but also some of those other areas. They would have to be extremely multitalented and multidisciplined people to be able to do that.

Mr HANNA: I am not after sympathy: I am after votes.

The committee divided on the amendment:

AYES (2)

Gunn, G.M.	Hanna, K. (teller)

NOES (36)

Atkinson, M.J.	Bedford, F.E.	Bignell, L.W.
Breuer, L.R.	Caica, P.	Ciccarello, V.
Conlon, P.F.	Evans, I.F.	Foley, K.O.
Fox, C.C.	Geraghty, R.K.	Goldsworthy, M.R.
Hamilton-Smith, M.L.J.	Hill, J.D.	Kenyon, T.R.
Kerin, R.G.	Key, S.W.	Koutsantonis, T.
Maywald, K.A.	McEwen, R.J.	McFetridge, D.
O'Brien, M.F.	Penfold, E.M.	Pengilly, M.
Piccolo, T.	Pisoni, D.G.	Portolesi, G.
Rankine, J.M.	Rau, J.R.	Redmond, I.M.
Snelling, J.J.	Stevens, L.	Venning, I.H.
White, P.L.	Williams, M.R.	Wright, M.J. (teller)

Majority of 34 for the noes.

Amendment thus negatived.

Mr HANNA: I move:

Page 60, lines 21 and 22—Delete subsection (3) and substitute:

(3) An opinion under subsection (2) must include a statement setting out—

(a) the reason or reasons for any conclusion drawn or opinion given by the medical panel; and

(b) details of any dissenting view of a member of the medical panel on any relevant question.

This is another amendment (a bit like the previous one) of elementary simplicity drawing on principles of natural justice again. In moving this amendment, I am suggesting that, when the medical panel—assuming the Rann government gets its way on this—comes out with an opinion, it must include a statement setting out the reason or reasons for its conclusion and the details of any dissenting view of a member of the medical panel on any relevant question.

I imagine that what we will have here is perhaps three doctors, sometimes it might be five doctors, sometimes it might be two doctors, I do not know, but there are two aspects to this. We all know that there are some medical questions, especially at the edges of medical science—for example, in the onset of certain diseases and their aetiology in the behaviour of aspects of the spine when it is damaged and how that might cause related pain in the leg through sciatica and so on—where two reasonable and qualified doctors will disagree.

I think that all the parties have the right to know whether the medical panel has come up with something other than a unanimous opinion. It is not a particularly radical idea: it is simply that the parties have the right to know why the medical panel has come up with the decision it has. They should state reasons. It is a common requirement in our tribunals these days—and it has been the practice of our courts for centuries—to state the reasons for decision. What were the facts upon which the decision was based? What was the reasoning and therefore what are the conclusions?

It is not good enough to have just a paragraph on the conclusions: 'Yes, the worker can do this because of that.' Everyone should have the right to know why the medical panel came to a particular conclusion, particularly when it means perhaps the difference of tens of thousands of dollars to the worker in a lump sum or, indeed, the question of whether or not their income maintenance continues. One of the minimal improvements we could make to this provision is to ensure that the medical panel must provide reasons.

The Hon. M.J. WRIGHT: We are opposing this amendment, as we believe the proposed legislation around the medical panel's decisions is already transparent. Their role is to determine a factual answer to the medical question and it is considered unnecessary for them to detail conclusions they may have drawn during this process and also unnecessary for a dissenting opinion to be provided. The panel will determine the answer between them and their decision is then final and binding. So, even if there was a dissenting opinion, there is no reason to provide the detail as there is no avenue for appeal. I also understand it is relatively uncommon for there to be dissent in other jurisdictions. I also refer the honourable member to section 98H(3), which states:

An opinion under subsection (2) must include a statement setting out the reason or reasons for the opinion provided by the medical panel.

The Hon. S.W. KEY: I want to clarify a point with the member for Mitchell. My understanding is that medical panels—and I certainly have some memory of them in the late 1980s and early 1990s under this system—were scrapped. If I recall correctly, the reason they were scrapped was that excessive delays and poor quality decisions were not transparent and understandable. There were also some difficulties, certainly if my memory serves me correctly, in constituting panels that could come up with sensible opinions or decisions that were understandable to the non-medical part of the workers compensation system. Is that one of the reasons why the honourable member is looking at being so explicit in moving this amendment?

Mr HANNA: Yes. All those circumstances are valid concerns in relation to the introduction of medical panels in this way. This amendment is a simple amendment about transparency—and that was the word the member for Ashford used. It is about transparency. One might bear in mind, too, that the decisions of medical panels will be used—and I think this is how they are used in other jurisdictions—as something of a guideline for subsequent parties in dispute. Obviously every case is different, but when a medical panel makes a decision that a person with a certain type of injury can do a certain type of work, it is quite likely that subsequent injured workers with the same kind of condition will base their response to determinations or claims manager directions on previous medical panel decisions.

In other words, where a worker disputes a particular direction by a rehab provider or a claims manager, their attention might be drawn to previous medical panel decisions which cover injuries similar to that of the worker. And so, it is all the more important for the opinions of the panel to display the full variety of opinion, if in fact that occurs, and that is the reason for this amendment. It is transparency not just for the injured worker and the other parties involved in a particular dispute but it may well be the subject of scrutiny by other parties with similar medical issues to be resolved.

The Hon. S.W. KEY: I want to ask a further question about that bearing in mind that later we will get to the functions and powers of medical panels and look at the interpretation of what a medical question would mean. I know that, certainly, there has been a lot of discussion amongst legal associations and unions about this question. Does the member for Mitchell believe that his amendment in any way assists with clarifying that question? As I understand it, this is something of great concern to many people outside this place. Certainly it will be a question I will ask the minister when we get to that part of the bill which he has put forward. It seems to me not only that the reasons and grounds need to be transparent but also that they are within the purview of what a medical question actually is.

Mr HANNA: When one looks at the definition of 'medical question' in the proposed new section 98E, one sees a very long list of possible questions. A very large number of those issues can be characterised as both medical and legal issues. For example, there may be a member of a particular medical panel deciding a question who considers that the medical panel is not qualified to make a conclusive decision about a particular question because that particular medical practitioner thinks it is really more a legal issue than a medical issue. Therefore, there might be a caveat to the medical opinion provided by that medical practitioner.

If the statement of reasons by the medical panel is just some sort of summary of the broad view without going into some of these reservations that certain members might have in a particular case, then none of the parties will be alerted to live medical issues which are actually outside the jurisdiction of the medical panel when there is an opportunity for medical practitioner panel members in a particular case to raise that very point. Let us just take one example. It might be capacity to return to work, or a question as to what employment would or would not constitute 'suitable employment' for a worker. That might be a good issue to deal with because, clearly,

medical practitioners can look at the worker and say, 'The worker has this type of injury, and it is likely to cause these types of limitations.'

But, of course, 'suitable employment' is not what we ordinarily mean by 'suitable employment'. It does not have to be a real job at all. So, legal issues are bound up in interpreting simple words such as that. A member of a particular medical panel might think, 'Well, I can give an opinion about the state of the worker's health. I can give an opinion about how far that worker can comfortably move their arm up and down repetitively. Someone can tell me that a certain job involves a task of moving the arm up and down to a certain extent, but I cannot really determine whether or not that is suitable employment because that brings in a definition which, ultimately, is a legal question.' Those sorts of reservations, in my view, should be expressed in a panel determination.

Amendment negatived.

Mr HANNA: I move:

Page 60—

Line 23—Delete 'For' and substitute:

Subject to subsection (5), for

After line 28—Insert:

(5) Subsection (4) does not prevent the Tribunal making a finding of fact on the basis of other evidence that it receives in proceedings before the Tribunal (and then any relevant opinion of a Medical Panel will not apply to the extent of any inconsistency with the finding of the Tribunal).

This is another elementary improvement to the medical panel concept put forward by the Rann government, and it goes to one of the fundamental objections that I have to the medical panel model that it is using. Basically with this amendment I am seeking to ensure that the opinion of the panel will not be conclusive of the issue. I say that, when a decision is being made about a worker's entitlements (whether it be to income maintenance or lump sum compensation), it should be made by a duly constituted tribunal or a court—it should not be made by a few doctors meeting behind closed doors.

I have barely begun to mention the problems of natural justice that apply to the way in which these medical panels will work. They do not even have to ask the worker to appear before them, although they may. They can skulk around in the workplace, asking questions of people and gathering bits of anecdotal evidence to inform their subsequent opinions when they meet to deliberate, and all of that seems to be allowed by the proposed section 98B. The way in which they operate is absolutely nothing like any tribunal or court we have ever had in this state or in this country, yet the Rann government wants to make their decision final when it comes to determining people's entitlements.

If you intend to have this sort of lax approach to fact finding and you are going to have people meeting behind closed doors and not necessarily hearing from the parties concerned, whether about factual matters or legal matters, I say that we must leave the final decision to the tribunal. If you must have the medical panel, have the doctors meet and make their determination however they might, but leave it essentially as at least evidence to be put to the tribunal so that the tribunal member can make the final decision.

We have already discussed an appropriate dispute resolution system; the government and I share the same view about that process. But we are absolutely at odds in this regard: it is absolutely appalling for any group of people, whether they be lawyers, doctors, judges, or whatever, to be given these guidelines under which to operate and then to come up with a final decision which is going to determine people's entitlements and may indeed determine whether they have a livelihood or not.

The Hon. M.J. WRIGHT: We are opposing these amendments as we consider it inappropriate to undermine the final and binding nature of the medical panel's decision. The government's proposed legislation sets out that, once a medical panel issues its determination, the decision is final and binding and is only reviewable through judicial review on procedural fairness grounds. The purpose of making decisions by medical panels final and binding is that the decisions are on medical matters, with the appropriate legal support provided by the registry, and that there is no role for judges in decision making on medical issues. This is left to the medical experts to decide.

Mr HANNA: I must say when the board recommendations came out and when the Clayton report came out I thought there really was a fundamental misunderstanding about what doctors do in courtrooms and what judges do, on an everyday basis, with the evidence that they receive about medical issues. It happens in the Magistrates Court, the Supreme Court, the Workers Compensation Tribunal—it happens around the country.

The fact is we have always had this adversarial system whereby evidence is put forward by one party, evidence is put forward on behalf of the other party, and then, no matter how scientific or esoteric the nature of the evidence, the judge, or tribunal member, as the case may be, is left to decide ultimately what the facts are and what the legal consequences are to reach a decision.

So this is actually a radical departure from the way we have run any of our justice systems ever before in South Australia. The radical nature of this cannot be underlined enough. The problems of natural justice I have begun to outline. It is something that has been refined over time in relation to our courts and tribunals. We insist on our courts and tribunals, generally speaking, being open, giving the parties a chance to be heard, giving the parties a chance to ask questions of each other, and having a variety of evidence presented on an issue, some evidence presented by one side, some evidence presented by the other side. That is the way we do things, because it is the fairest way to reach a decision. There is no pretence of fairness in the way that this medical panel operates. It is going to lead to a great many injustices, and it is going to be a heavy burden on the conscience of those members who vote for it.

The committee divided on the amendments:

AYES (2)

Hanna, K. (teller)	Williams, M.R.

NOES (34)

Atkinson, M.J.	Bedford, F.E.	Bignell, L.W.
Breuer, L.R.	Caica, P.	Ciccarello, V.
Conlon, P.F.	Evans, I.F.	Foley, K.O.
Fox, C.C.	Geraghty, R.K.	Goldsworthy, M.R.
Hill, J.D.	Kenyon, T.R.	Kerin, R.G.
Key, S.W.	Koutsantonis, T.	Maywald, K.A.
McEwen, R.J.	McFetridge, D.	O'Brien, M.F.
Penfold, E.M.	Pengilly, M.	Piccolo, T.
Pisoni, D.G.	Portolesi, G.	Rankine, J.M.
Rau, J.R.	Redmond, I.M.	Snelling, J.J.
Stevens, L.	Venning, I.H.	White, P.L.
Wright, M.J. (teller)		

Majority of 32 for the noes.

Amendments thus negatived.

The Hon. M.J. WRIGHT: I move:

Page 63, after line 12—Insert:

(ba) without limiting paragraphs (a) and (b)—

(i) to receive and investigate complaints about failures to comply with section 58B or 58C and to give directions to the corporation or any relevant employer in connection with the operation or requirements of either section;

(ii) to investigate other matters relating to providing for the effective rehabilitation of disabled workers and their return to work on a successful basis;

This amendment to section 98D emphasises the importance of sections 58B and 58C of the Workers Rehabilitation and Compensation Act, which set out an employer's duty to provide work and notice of termination of employment to be given in certain cases respectively. The amendment has similar purpose to government amendment No. 2 to clause 7 of the WorkCover Corporation (Governance Review) Amendment Bill, which requires the new corporation charter to deal with steps and initiatives around maintaining effective rehabilitation and return to work systems for injured workers, including the administration and enforcement of sections 58B and 58C.

Amendment carried.

Mr HANNA: I move:

Page 64, after line 14—Insert:

(6a) Without limiting a preceding subsection, the WorkCover ombudsman must include in the WorkCover ombudsman's annual report information about the extent to which disabled workers have been able to return to work during the course of the relevant financial year (whether on a permanent or temporary basis and whether in previous or new employment or work).

This is another simple amendment. In the whole section of the act dealing with medical panels—that is, part C of the act—there are a number of provisions, and then we get to a different part of the same amending clause of the bill. In this part we are dealing with a proposed new part 6D in the legislation that refers to the WorkCover ombudsman, so we are actually changing the topic although we are still dealing with the same clause (and when we come back to discuss the clause itself I will say some more things about medical panels).

In relation to the WorkCover ombudsman, I have moved this simple amendment to suggest that information about the extent to which disabled workers have been able to return to work in the relevant financial year should be included in the WorkCover ombudsman's annual report. It is as simple as that. We have a proposal for a WorkCover ombudsman (which I do not see as being a bad thing in itself) and we have an annual report that the WorkCover ombudsman has to file anyway and present to the minister for presentation to parliament. All I am saying is this: let us ensure, by statute, that there is a report in that on the extent to which disabled workers have been able to return to work.

The government and I share the view that return to work should become more of a focus in the legislation—and, more importantly, in the culture of the claims managers, employers and workers. If we are to achieve that, let us give the WorkCover ombudsman that focus as well, and that will be manifest in the annual report required of the WorkCover ombudsman.

The Hon. M.J. WRIGHT: We are opposing this amendment. It is completely unrealistic to be able to provide that sort of detail around the return-to-work rates. Additionally, reporting on statistics is not the role of the WorkCover ombudsman. Development of data about return-to-work rates is a complex exercise. This is currently conducted independently and nationally through the Comparative Performance Monitoring reports and Campbell's Return to Work survey. These projects have been operating for a number of years, and have been developed with extensive technical input. We believe that it would be unrealistic to expect the ombudsman to undertake such a role.

Mr HANNA: I am familiar with the Campbell's Return to Work Monitor to which the minister has referred. It is a good read if you are into that sort of thing. The problem is that members of parliament do not generally look at it. If we have a WorkCover ombudsman's annual report tabled here, it seems to me that the important statistics about return to work should be in it, so members of parliament would at least have a browse through it to get a sense of where we are at in South Australia.

There is nothing in this amendment that suggests that the WorkCover ombudsman has to travel around the country or around all the worksites to work out what the return-to-work rates are. They are publicly available. The WorkCover ombudsman could talk to WorkCover, to the claims agent and to Campbell's, and publish the figures, even if they have been published elsewhere. The point is that it is something that needs to be brought to the attention of members of parliament, and an appropriate way to do that would be in the WorkCover ombudsman's report.

Amendment negatived.

Mr HANNA: I will now make some remarks about this clause and, in particular, the whole concept of medical panels. Before I do that, I will divert briefly to make a comment about the WorkCover ombudsman. I do not have any great objection to the WorkCover ombudsman.

Some of the functions provided to the WorkCover ombudsman in this proposal would have been carried out by the WorkCover Advocacy Unit, which was in WorkCover. That unit, of course, was axed by this Labor government so that it could set up another agency, funded through SA Unions by the Labor government. That advocacy unit did a powerful amount of good for individual workers in taking their claims forward.

I appreciate that the functions of the ombudsman are somewhat broader, and they are there to make recommendations on a systemic level as well. So, I suppose it is a good thing to

have someone thinking about those things. Let us not forget that we also have a standing committee of the parliament which is meant to deal with these same issues.

I do not object to the WorkCover ombudsman position being created, and I think that all the functions and powers seem reasonable. I have already referred to the extraordinary power of the ombudsman to intervene in the case of discontinued payments pending resolution of a dispute being recommenced under the direction of the ombudsman—an extraordinary mishmash of tribunal powers with statutory authority powers.

I really want to address my remarks to the medical panel proposal. The point has already been made briefly that there are doctors to make conclusive decisions about workers' entitlements behind closed doors. There is no real requirement to ensure procedural fairness. I acknowledge that the minister may, if the minister wishes, establish some procedural fairness guidelines for the medical panel, but there is nothing really to make the medical panels comply with them, because their decisions are final.

The medical panel could operate a bit like the old Star Chamber. It was through the excesses of the Star Chamber in England a few hundred years ago, whereby suspects could be arrested, imprisoned, sometimes tortured, kept in isolation, etc., that our subsequent philosophy of natural justice was developed. I think that is a broad, sweeping statement, but it can be justified with the development of our jurisprudence of natural justice.

The problem is that once they are selected they are not bound by the rules of evidence, but they can inform themselves in any way they consider appropriate. So, doctors could go down to the workplace and have a chat to the local workers about what they think is fair in terms of the duties they do or the physical requirements of the job. They could go down to the local pub where the workers drink and have a chat to them to get the inside gossip on what happens in the workplace. My point is that there are no limits.

The medical panel can engage consultants and seek expert advice as it considers necessary. That is interesting because it means that, if statistical evidence or legal opinion were required in the opinion of the medical panel and it sought advice from an economist, a statistician, an occupational therapist, a rehabilitation provider or even a lawyer to establish the legal guidelines underpinning their decision, they would nonetheless come up with this conclusive determination. Contrast that with the position if such a decision were made in a tribunal, where any one of those expert witnesses would need to be called to give evidence and could be cross-examined for the reasonableness, bona fides and, indeed, professional standards of the advice being given.

I have made the point that it is extraordinary that we give to this collection of professionals the power to decide medical questions but, of course, they can draw upon lawyers, statisticians or any other kind of expert to come to their conclusions, and yet those types of evidence cannot be tested by any of the parties. It is important to note that the medical panel need not call the worker to give evidence. It may look at documents and it may ask the worker to meet with them and answer questions, but it does not have to. It could do the whole thing without consulting the worker at all.

A worker, of course, who is brought before this Star Chamber of medical experts cannot really refuse, because under proposed new section 98G(5) their payments can be cut off. So if the worker is told, 'You need to be before the medical panel next week. Come alone. Bring your documents with you,' and the worker does not comply with that request, their payments can be cut off.

I turn to the matter of medical questions. Under the proposed new section 98E there is a long list of about 17 different possible questions plus the catch-all provision 'any other prescribed matter'. Many of these issues contain mixed questions of law and fact. In fact, one could create a legal issue out of just about any one of them, even the question of whether a worker has a disability.

For example, if the worker has depression, is not working and has put in a claim for income maintenance, to what extent does that worker have to be depressed for it to be a disability? What if the worker can turn up to work, perform some of their functions, but not all of them: does the worker have a disability? What if the worker feels bad, even though they can do everything at work: does the worker have a disability?

There are questions that will inevitably arise when it comes to the questions of return to work and the implementation of rehabilitation plans. I pointed out earlier that as soon as you introduce terms such as 'current work capacity' or 'suitable employment', you cannot afford to think

only of the plain meaning of those words. The medical panel will need to have a look at the interpretation section of the revised Workers Rehabilitation and Compensation Act to figure out how to answer what is supposed to be a medical question before them.

There are also issues of mutuality. When a worker says that they have to leave work because of medical issues, there will always be some circumstances where there is a question not only about the medical side of it, but about whether, in fact, there has been a breach of mutuality that warrants discontinuance of payments. There is no clear guidance about how far the medical panel itself will go in the sense that it is going to be dependent somewhat upon the question that is put to them, and how it is framed. Even if they do go over the mark into legal issues, there seems to be absolutely no chance of challenging their decisions.

The only thing I can think of is that there may be a judicial review of the decision which seems to go beyond what is strictly a medical question. I ask the minister: is it intended to restrict in any way judicial review of medical panel decisions if there is an allegation that they have gone beyond answering what we would consider strictly a medical question?

The Hon. M.J. WRIGHT: No.

Mr HANNA: The interesting thing about that is that what might have been a straightforward issue being resolved before a single member of the tribunal on a question of medical issues and law then ends up being a Supreme Court case on whether the medical panel has gone outside its jurisdiction.

So I can see how the intention of the legislation could well backfire, because a worker who receives a decision from a medical panel which has the effect of cutting their income maintenance or drastically reducing lump sum compensation will have very little to lose other than to resort to the Supreme Court and point to where the medical panel may have overstepped the mark in terms of its jurisdiction. So, although the minister says that this has worked well interstate, there are real problems in terms of whether this is really an efficient means to deal with these questions.

Dr McFETRIDGE: This particular clause has come under a lot of discussion and questioning. Certainly, the issue of medical questions has been raised by a number of lawyers and employers that I have spoken to. One lawyer has sent me a bit of information, and this probably sums it up better than I could, not being a lawyer. It talks about the definition of a medical question and says that it includes matters that are not traditionally seen as being medical questions. For example, the first question talks about empowering the medical panel to determine whether a disability arose out of or in the course of employment.

The person who sent me this information says that there is a long list of case law going back some 100 years, with a series of decisions in the High Court of Australia in this area. It is a very complex and evolving area of the law. He says that a conclusion can only be made after findings of fact are made and the difficulty is that the medical panel is not trained for such decisions and, worse still, the medical panel effectively can operate in secret. In fact, I think the expression the member for Mitchell used was 'star chamber', and I think he must have been speaking to the same lawyers as those I was speaking to. They were not rapt with it.

For my own non-legal mind, I got a little excited about the fact that there was a question whether a worker's employment was a substantial cause of a worker's disability consisting of an illness or a disorder of the mind. For me, that raised the issue of whether this was really a no-fault compensation scheme again, because the question was whether a worker's employment was a substantial cause of a worker's disability. So, was it one of those accidents that happened just because you happened to be at work, or was it something that happened as part of your work? That is an issue.

The minister also mentioned in a previous answer a medical registrar assisting the medical panels in the interpretation of legal fact because, to me, that is the big issue for all the people I have spoken to. They say these doctors are not lawyers so they cannot interpret the facts. If there is something that can reassure us that it will work, that would be good.

I understand the ombudsman gets only about 50 complaints a year about WorkCover issues, so whether the WorkCover ombudsman will relieve him of much work I am not sure, but perhaps it is a necessary role. I have been asked by one of the employer groups to ask a question (because they have some concerns) about the power and role of the WorkCover ombudsman. I think if they refer to the bill they will see that, but also they have made the comment about the suitable alternative employment provision, 'increasing the WorkCover ombudsman's powers to ensure that employers meet their obligation to provide suitable employment for injured workers

(this will be further strengthened by a new penalty of up to $25,000 for any breaches)'. If the minister can give me information on that I would appreciate it.

The Hon. M.J. WRIGHT: In regard to the registrar, there will be staff to support the medical panels to ensure the quality of their decision. So that is really the function of what would be required of the staff.

We have talked about the medical questions. It is to deal with medical issues, for example, a worker's capacity or appropriate treatment. The clause that we came forward with is based on the Victorian provisions. New section 98F(3) allows the panel to determine that the question before it is not a medical one.

The issue of the illness or disorder of the mind relates to the need for a power to consider section 30A issues and psychiatric disabilities. What was the question about the ombudsman? Can you repeat that?

Dr McFETRIDGE: That question was about clarifying the powers and roles of the ombudsman, but I think the people who have asked me these questions can look at the act themselves. They have a particular query, and that is about the suitable alternative employment provision, 'increasing the WorkCover ombudsman's powers to ensure that employers meet their obligation to provide suitable employment for injured workers (this will be further strengthened by a new penalty of up to $25,000 for any breaches)'. I cannot find that for myself at the moment, and it would be good if the minister could help me.

The Hon. M.J. WRIGHT: I think we have already moved an amendment in regard to that. It is section 58B, where there is a new penalty of up to $25,000.

The Hon. S.W. KEY: I should say at the outset that I am very concerned about medical panels. I found it very difficult to find anyone who thought medical panels were a good idea, so I guess my first question to the minister is about the establishment of medical panels. In fact, I would expect to see a lot of legal disputes, because there is no opportunity to question the decisions of the medical panel. I suspect that a lot of issues will be referred to the Supreme Court. How is this going to assist the unfunded liability, and will this be another layer that will be very expensive for WorkCover to try to deal with?

The Hon. M.J. WRIGHT: Dealing with the last part of the question, I do not believe that to be the case, with respect to the expense to WorkCover. However, the introduction of medical panels in the South Australian scheme would enable disputes over medical matters to be decided by medical experts, not by non-medically trained arbitrators or members of the judiciary, as is currently the case. They would also improve the quality and speed of decision making, thus improving return to work and claims management outcomes. Medical panels are used by and have proven to be effective and successful in other jurisdictions, namely, Victoria and Queensland. It is believed that they would generate conditions under which these key improvement areas were more likely to be achieved, rather than having an immediate and tangible outcome in the short term.

Based on the experience in other jurisdictions, efficiently managed medical panels are likely to contribute to improved quality of decision making; final and binding decisions not subject to review on medical grounds; improved speed of decision making; and change in behaviour and culture. In conjunction with other proposed changes, these areas of improvement are likely to be central to the achievement of scheme outcomes, particularly improving return-to-work rates and getting injured workers back to work sooner. In the longer term, the effective functioning of medical panels would contribute to the achievement of the principal objectives outlined above.

The Hon. S.W. KEY: A number of questions have been raised by the Law Society, which I would like to follow up. Some have been dealt with, to a certain extent, in the amendments moved by the member for Mitchell, and also in the discussions that we have had previously. Concerns have been raised by the Law Society and also by the unions—SA Unions, in particular, in its submission—that they believe that the medical panels have too much power and that, despite the efforts of the member for Mitchell, there will not be the opportunity to go into the reasons why a medical panel made a particular decision and the details of that.

There is a view that decisions will be made by people who are not necessarily qualified to make decisions about issues to do with rehabilitation, employment and other non-medical areas and that, if this is such a good idea, why can it not be more transparent and appealable, or reviewable, within the WorkCover system, rather than having to go into other territory—for example, the Supreme Court—to have definitions and decisions clarified, when we have a very good system in place at the moment which, as far as I can see, will not be necessary if we

introduce these medical panels. I understand what the minister is saying with regard to this not making an additional impost on the unfunded liability, but I am wondering how it can possibly be an economically more efficient way of dealing with concerns of this sort.

The Hon. M.J. WRIGHT: Some of the questions that the member for Ashford raised have already been answered, as she correctly said. With respect to the representation from SA Unions in regard to medical panels, we are aware that it does not support this measure, but we think it is a good idea. It has worked in other jurisdictions, and it will work here.

The Hon. S.W. KEY: My last question relates to who will be on these medical panels. Those of us who have had the opportunity to advocate in this area have had concerns, I think it would be fair to say, about some of the professionals who were employed either in the bad old days of the insurance companies or in the less bad old days by some of the self-insured employers, and also by the different claims managers. There has been quite a history, certainly in my time, of medical practitioners who come up with medical reports that seem to suit whomever they are working for. On a practical level, I am obviously very concerned about this area.

I understood that one of the reasons the medical panels were closed down in the early 1990s was because it was not possible to bring together in a timely fashion medical experts who were appropriate for the particular decision or advice on which they were to confer. We are always hearing about the shortage of doctors and health professionals in Australia, not only in regional areas but also locally, and I wonder what has happened to make the minister think that we will be able to have appropriate medical personnel on medical panels who have the expertise that is spelt out in the questions that a medical panel is supposed to answer, and that we will be able to do so in a timely fashion.

The Hon. M.J. WRIGHT: With respect to the reference that the member made to the panels in the early 1990s, it is my understanding that they were not effective because they were not final and binding. As I said before, Clayton says that the doctors are available, and the AMA agrees. I spoke earlier about the minister's appointing the selection committee made up of key stakeholders, and that selection committee would select the pool of doctors to be on the medical panel.

The CHAIR: The question is that clause 60 as amended be agreed to. I put the question. Those in favour say aye; against say no. The ayes have it.

Mr HANNA: Divide!

While the division was being held:

The CHAIR: No count is required, there being only one member voting no.

Clause as amended passed.

Clause 61.

Mr HANNA: I move:

Page 67, after line 30—Insert:

(2) Section 103A—after subsection (2) insert:

(3) Without limiting any regulation made under subsection (1), the following classes of persons performing the following classes of work will be taken to be prescribed for the purposes of this section:

(a) volunteer fire fighters with respect to the following classes of work:

(i) any activity directed towards—

(A) preventing, controlling or extinguishing fires;

(B) dealing with other emergencies that require SACFS to act to protect life, property or the environment;

(ii) attending in response to a call for assistance by SACFS;

(iii) attending a SACFS meeting, competition, training course or other organised activity;

(iv) carrying out any other function or duty associated with the activities of SACFS under the Fire and Emergency Services Act 2005 or the Emergency Management Act 2004;

(b) SASES volunteers with respect to the following classes of work:

(i) any activity directed towards dealing with an emergency, or undertaking a rescue;

(ii) attending in response to a call for assistance by SASES;

(iii) attending a SASES meeting, competition, training course or other organised activity;

(iv) carrying out any other function or duty associated with the activities of SASES under the Fire and Emergency Services Act 2005 or the Emergency Management Act 2004.

(4) In this section—

emergency has the same meaning as in the Fire and Emergency Services Act 2005;

SACFS means the South Australian Country Fire Service;

SASES means the South Australian State Emergency Service;

SASES volunteer means-

(a) a member of SASES; or

(b) a person who, at the request or with the approval of a member of SASES who is apparently in command of any SASES operations, assists with dealing with an emergency or the threat of an emergency

who receives no remuneration in respect of his or her service in that capacity;

volunteer fire fighter means—

(a) a member of SACFS; or

(b) a fire control officer under the Fire and Emergency Services Act 2005; or

(c) a person who, at the request or with the approval of a member of SACFS who is apparently in command of any SACFS operations, assists with dealing with a fire or other emergency or the threat of a fire or other emergency

who receives no remuneration in respect of his or her service in that capacity.

In the course of consultation on this legislation, it was brought to my attention that, under the current regulations of the legislation, the Country Fire Service volunteers are covered essentially by WorkCover entitlements. In other words, if they are injured in the course of their volunteer duties they will be able to receive the benefits of the WorkCover legislation. I wholeheartedly support the prescribing of that class of persons as eligible for WorkCover benefits. Our volunteer firefighters, in many cases at particular critical times, do work just as extensive and as dangerous as our professional firefighters.

I do not mean every day, I mean that, when the going gets tough and there is a bushfire, these people are out there facing mountains of flame protecting lives, property and whole communities. It is a mark of respect by the government and the parliament that they be accorded appropriate compensation rights for the unpalatable event when they might be injured in the fires they are out there to extinguish. My amendment takes the volunteer firefighters and actually names them in the legislation, so that there can be no doubt for the future that volunteer firefighters will be included and be effectively deemed to be workers on behalf of the State of South Australia, and thus receive WorkCover benefits if they require them.

In my opinion, one group is left out, that is, our emergency services volunteers, the South Australian SES volunteers. They get out there when there is an emergency—sometimes it will be in conjunction with the CFS in relation to bushfires, sometimes it might be floods, and sometimes it might be a horrific road accident. The SES will be out there directing traffic—possibly hands-on in dangerous situations—securing the rescue of people from the circumstances in which they have been injured. Of course, whether volunteer firefighters or SES volunteers, there is a range of peripheral activities to the actual life-saving work they do. They need to drive around, they need to be trained, they go into competitions in other ways, and they maintain their fitness and so on.

It seems to me that in all these activities—in terms of the core functions of the volunteer firefighters and the SES volunteers and those other things they need to do to be able to respond at the critical times—they ought to be covered under this legislation; and if they are injured when they go out voluntarily to do their bit for the community they deserve to be covered by this legislation. It is as simple as that. I am suggesting that both these types of worthy volunteers ought to be

included in this legislation and given coverage. I will communicate with the SES about how people vote in relation to this, and we will see whether the other members of parliament share my view that these groups are worthy of protection under compensation legislation.

The Hon. M.J. WRIGHT: This is not something that was raised by Clayton. It is not an unreasonable proposal, and the government may consider it in time. However, any decision to deem classes of person or work within the ambit of the Workers Rehabilitation and Compensation Act is a serious one. It deserves detailed and careful analysis and can be done by regulation at a later time. For those reasons, as I say, it is not an unreasonable proposal and we may look at it in time.

Dr McFETRIDGE: No pun is intended but this amendment rings alarm bells with me. With respect to CFS volunteers (and I will correct the member for Mitchell a little), certainly they are volunteers but they are truly professional in their job. In fact, I recently rejoined the Kangarilla CFS. I was the captain of the Happy Valley CFS—

The Hon. M.J. Wright interjecting:

Dr McFETRIDGE: Actually, I have been to hundreds of incidents with the CFS over the years. I rejoined just before the Willunga fires. The CFS, as we all know nowadays, is dependent on a lot of people who are working during the day. Many people just do not have the heavy truck licences, and the CFS does need people to drive the big water tankers. I may not be ready for a first alarm, but as a back-up driver on a heavy tanker I am proud to say that I would be happy to do that for the CFS, because it does a terrific job.

That is why I am really quite concerned that there is any doubt whatsoever about this in relation to volunteers, whether they are CFS volunteers doing a professional job, doing the complete role that any MFS officer would be asked to do, from bushfires to structure fires to accident rescue, Hazchem, the whole lot, it is all there. I am really concerned that they are not covered under the current legislation. If there is any doubt about it I would like to know. Certainly, I would have assumed that SES volunteers would have been equally protected.

So I would ask the minister to take that on board, and perhaps in his response later on he can assure me that this is the case, because there is no way that we would ever leave our volunteers out there without adequate protection. They are giving up their time, many, many hours, saving the state millions of dollars, if not billions of dollars, and, certainly, when you add up the property saved by the work of these volunteers, and lives saved, it does count in the billions of dollars. So, to make sure they are covered is something the opposition would be very concerned to see in this new legislation—and I assumed it was in the current legislation.

The Hon. M.J. WRIGHT: CFS is covered by regulation.

Mr HANNA: Yes, I was going to clarify that for the member for Morphett. There is coverage for CFS volunteers by regulation. So, it can be made or unmade by a minister at any time. I think that the CFS deserves recognition in the legislation so that this cannot be taken away from them at a future time. This consideration led me to think, well, if we are going to do that for the CFS surely we should do that for the SES as well. So often they work together on the same sort of incidents. I hasten to add, in response to the member for Morphett, that when I made comparisons about professionals I certainly was not detracting from the professional standards of the CFS and SES volunteers. But, of course, our professional firefighters in the MFS are going to be covered as employees, pursuant to definition under the legislation. That is why we have to make a special case for these brave volunteers.

I would be more relaxed about this amendment if the minister could actually make a commitment that the SES are going to be prescribed under the regulations. At the moment it seems that the minister is just saying that he will look at it, but I do note that these amendments have been available for about a week, so there has been a chance for the minister to consider this option. There has been an opportunity for cabinet to discuss it, if need be. I really would like to hear of such a commitment tonight. But if that is not possible, fair enough. Let's proceed with the amendment, and I hope that members will support it.

Ms BEDFORD: I would just like to ask the member for Mitchell a couple of further questions on this amendment. Are there any other volunteers that you think could be considered for this sort of protection and, in particular, I am talking about things like surf lifesaving, with the sudden upsurge in the number of deaths and problems at the water level? We know how dangerous surf can be. Have you given that any consideration?

Mr HANNA: I think there is merit in that, and perhaps consideration should be given to all of these groups. Think of St John's volunteers, think of surf lifesavers. Both of those types of volunteers also can get into dangerous situations. St John's volunteers might be lifting a patient or get involved in some sort of aftermath of a motor vehicle accident. Surf lifesavers obviously face dangerous situations at times when going out to save people. I think there is room to expand this amendment, if nothing else.

I put the amendment tonight because I am sure that the CFS and the SES should be covered, and especially when one is but the other is not. I suppose more than any of those other groups of volunteers I think of the SES as warranting coverage, because their work in many ways is similar to what the CFS does. When there is a major community emergency they will be out there. With the CFS obviously it is a fire emergency, but with the SES it could be any kind of emergency, as I said. So there is actually some similarity, some congruity with those two. But I would appreciate it if the government would consider coverage for other similar groups of volunteers.

Ms BEDFORD: I would also like to ask the member if you think it would encourage people to volunteer for services such as the SES, or other groups, if they knew or thought that this sort of protection was available if they were injured.

Mr HANNA: Well, that's right. I have not actually had a discussion with people about whether this is a reason that you would volunteer or would not volunteer. I do not think it is as simple as that. In fact, people usually do not think about compensation for injuries until after it has happened to them, in my experience. These people are going out there, knowing the danger, facing the danger, but I think every one of us would be sorry to hear of a case happening tomorrow where an SES volunteer went out to an emergency, was injured, and left without income, perhaps being left without being able to pay the mortgage, and without being able to feed the children, etc., because of courageous work in the community. So it is to prevent this sort of thing that I put this forward. I think it could actually be a point of attraction when seeking volunteers to say, 'Look, you are covered. You might be going into a dangerous situation, but it is some comfort, not that you ever want to be injured, and we will take care that you are not injured, but there is some comfort that if you are there is compo available.'

The committee divided on the amendment:

AYES (2)

Hanna, K. (teller)	Williams, M.R.

NOES (34)

Atkinson, M.J.	Bedford, F.E.	Bignell, L.W.
Breuer, L.R.	Caica, P.	Ciccarello, V.
Conlon, P.F.	Evans, I.F.	Foley, K.O.
Fox, C.C.	Geraghty, R.K.	Hill, J.D.
Kenyon, T.R.	Kerin, R.G.	Key, S.W.
Koutsantonis, T.	Lomax-Smith, J.D.	Maywald, K.A.
McEwen, R.J.	McFetridge, D.	O'Brien, M.F.
Penfold, E.M.	Pengilly, M.	Piccolo, T.
Pisoni, D.G.	Portolesi, G.	Rankine, J.M.
Rau, J.R.	Redmond, I.M.	Simmons, L.A.
Snelling, J.J.	Stevens, L.	Venning, I.H.
Wright, M.J. (teller)		

Majority of 32 for the noes.

Amendment thus negatived; clause passed.

Clauses 62 and 63 passed.

New clause 63A.

Mr HANNA: I move:

Page 68, after line 4—Insert:

63A—Amendment of section 107A—Copies of medical reports.

Section 107A(1)—delete subsection (1) and substitute:

(1) The corporation must, within seven days after receiving a request from a worker's employer, provide the employer with copies of reports, or relevant extracts from reports, in the corporation's possession prepared by medical experts if (and only if) the corporation is satisfied that the request is directly relevant—

(a) to the worker's progress in rehabilitation or in being able to return to work; or

(b) to the extent of the worker's incapacity for work.

I well recall the debate that was had about medical reports in 1994-95 when the Liberal government was putting through cuts to WorkCover—nowhere near as severe as what this Labor government is doing now, but they did have a go, and there was an issue about medical reports. According to my recollection, which may be faulty at this time of night, it was then that a provision was inserted to insist that medical reports must be sent to the employer of the injured worker.

There is a certain rationale behind that. I have already spoken tonight about natural justice. Where there is a medical report concerning the worker's ability to carry out duties in the workplace, one can understand that the employer would want to know the abilities or disabilities of the worker. So, that is fair enough, but the problem arose in this way, and it has been a problem ever since. It is very common that psychiatric reports are prepared on the worker because for so many workers there are psychological complications arising from the injury, whether it is when the injury happens or because of the claims management and the consequences of not being able to work and so on.

It is quite common for psychiatric reports to be prepared. One can understand claims managers seeking those when there is a suggestion by the worker that there has been some psychological harm. When these psychiatric reports are prepared—and most often they are done by psychiatrists, but sometimes by psychologists—there is often a great deal of detail about the worker's entire life story, including every trauma that the worker might ever have suffered. There might be details of teenage abortions, schoolyard bullying, parents dying prematurely, siblings being in gaol, all kinds of skeletons in the closet, and these are things which employers simply do not need to know.

It is not so much a problem in a large corporation where there is a human resource department and such reports are filed away professionally by someone in the human resources team. Where it does become an issue is in the small workplace—a deli or a small factory (five or 10 workers) or a small office (a real estate agency or an accountancy firm)—and you have got a psychiatric report detailing every trauma the worker has ever been through in their life going to the employer. On occasion, these details have been leaked in the workplace and then used insidiously against the worker. Because of the details about their past history, they may be bullied or teased.

There is a serious issue about the worker's dignity here, and I think there is a way around it, and that is what this amendment is about. This amendment provides for the corporation (in effect, the claims manager), within seven days of receiving a request from a worker's employer, to provide the employer with copies of reports or relevant extracts if (and only if) the corporation is satisfied that the request is relevant to the worker's progress in rehabilitation, return to work, or in relation to the extent of the worker's incapacity for work.

Sometimes the worker has been off work for some time and the employer legitimately wants to know why the worker is allegedly unable to work. So, it seems reasonable for medical reports to be provided to give the employer the assurance that, in fact, the worker is so badly injured that they can no longer go back to that workplace.

The key change here is that such reports or extracts should be provided only if they are relevant to those issues, and those issues are really the only things that need to concern an employer. What is the worker's progress in rehabilitation? Is the worker able to return to work, or what is the worker's incapacity for work? I think we all agree that those are all issues employers would need to know.

They do not need to know what happened in the worker's family when they were five years old; they do not need to know whether the worker was raped when they were 10 years old; and they do not need to know whether the worker had a traumatic experience in an orphanage when they were 15. That is the stuff that is often contained in psychiatric reports, and employers, especially in small workplaces, do not need to have that information. It is not likely to help the relationship between the worker who is trying to get back to work and the employer. The reason for the amendment is to afford the injured worker dignity and privacy.

The Hon. M.J. WRIGHT: The government believes that the current provisions are adequate and consequently does not support the amendment.

The committee divided on the new clause:

AYES (2)

Hanna, K. (teller)	Williams, M.R.

NOES (35)

Atkinson, M.J.	Bedford, F.E.	Bignell, L.W.
Breuer, L.R.	Caica, P.	Ciccarello, V.
Conlon, P.F.	Evans, I.F.	Foley, K.O.
Fox, C.C.	Geraghty, R.K.	Hill, J.D.
Kenyon, T.R.	Kerin, R.G.	Key, S.W.
Koutsantonis, T.	Lomax-Smith, J.D.	Maywald, K.A.
McEwen, R.J.	McFetridge, D.	O'Brien, M.F.
Penfold, E.M.	Pengilly, M.	Piccolo, T.
Pisoni, D.G.	Portolesi, G.	Rankine, J.M.
Rau, J.R.	Redmond, I.M.	Simmons, L.A.
Snelling, J.J.	Stevens, L.	Venning, I.H.
White, P.L.	Wright, M.J. (teller)	

Majority of 33 for the noes.

New clause thus negatived.

Clause 64 passed.

[Sitting extended beyond 10:00 on motion of Hon. M.J. Wright]

New clause 64A.

Mr HANNA: I move:

Page 68, after line 10—Insert:

64A—Insertion of section 107C

After section 107B insert:

107C—Worker's right to be accompanied to a medical appointment

(1) Subject to subsection (2), a worker who is attending an appointment with a medical expert or Medical Panel in connection with the operation of this Act is entitled to be accompanied by a companion.

(2) Subsection (1) does not apply if the medical expert or Medical Panel requests on any reasonable ground that the companion not attend.

This proposal for workers to have the right to have someone accompany them to a medical appointment has come directly from my consultation with injured workers recently A number of workers feel intimidated by going to medical practitioners, especially those to whom they are directed by claims managers. This is even more so where claims managers over-work the file and repeatedly send workers back to medical assessments. The level of frustration can increase if the worker has a reasonable view that, in fact, they are being shunted around to no obvious benefit.

There are a number of classes of vulnerable workers. Those who have poor English—not necessarily to the level requiring a formal translator, but, nonetheless poor English—is one category where they would like someone to go with them to medical appointments. Some workers are distressed psychologically either because of a work injury or some pre-existing mental illness. They are often extremely fearful of medical examinations which might be required by the claims manager. One can imagine other examples as well.

To be clear about the amendment, I am suggesting that there is a right for a person attending an appointment with a medical expert, or the medical panel, to be accompanied by a companion. There is an out-clause—an exclusion—if the medical expert, or the medical panel, requests on any reasonable ground that the companion does not attend. I can imagine cases where there might be an extremely vexatious companion, and the presence of the companion might be incompatible with an appropriate examination. It might be that the examination is of such

an intimate kind, that the medical expert considers that it is inappropriate for the companion to be present.

There might be an interview by a psychiatrist where there cannot be any interruptions or leading in any way of a story being given by an injured worker; so there might be some reasonable ground for the companion not to attend. The principle is sound. This is something that will not be used by the majority of workers, but it could possibly be used by a majority of vulnerable workers.

The Hon. M.J. WRIGHT: The current practice provides injured workers with the right to request that a relative, friend or representative may attend independent medical examinations. If a third person is present, however, they are not to take an active part in the examination and they are not to act as an interpreter. The legislation allows the minister to establish guidelines for the operation of the medical panels, and I expect that this issue could suitably be addressed in those guidelines.

Ms BEDFORD: Member for Mitchell, I would like to go a bit further into that. If it is not an examination of an intimate or highly personal nature, to what sort of situations would 107C(2) apply? What would be a reasonable ground for a support person not to attend? Would there be any others?

Mr HANNA: I have listed the obvious ones that I can think of, and I am trying to give an appropriate exclusion there for the medical expert. If, for example, an injured worker is being asked to attend for an X-ray or a CAT scan, it would be entirely appropriate for a support person to come with them; similarly, if an occupational physician was accompanying the worker to a worksite. It is simply a demonstration of what duties might be involved, and to see how far the worker can actually carry out some of those duties on the spot.

I cannot imagine a good reason why there should not be a companion of the worker's choice to go with them. As I said, there may be some companions who just would not be suitable as companions; so there has to be some exclusion clause. But, if this is passed, I hope that in most cases it would be respected as the worker's wish that someone go with them.

Ms BEDFORD: Outside of a situation where there are reasonable grounds for a support person not to attend, do you see any negatives attached to this amendment?

Mr HANNA: The purpose of the interaction with the medical expert or the medical panel is likely to be some form of medical assessment. It might conceivably be at the workplace; it is more likely to be at professional rooms. I cannot see any negative impact so long as the examination can be carried out professionally.

If anything, I would have thought that having the support person there makes it more likely that there will be full cooperation from the worker, especially if we are talking about one of the medical practitioners who have been selected by the claims manager, and there might be some fear or even hostility in the background because of the relationship with the claims manager. It might actually mean that there is a more frank and cooperative relationship with the medical expert if there is a support person there.

New clause negatived.

Clause 65 passed.

New clause 65A.

Mr HANNA: I move:

Page 68, after line 15—Insert:

65A—Insertion of section 111A

After section 111 insert:

111A—Inspection of workplaces by officials of employee associations

(1) An official of an employee association may, at any reasonable time, enter any workplace at which 1 or more members of the association work if the employee association has assessed, on reasonable grounds—

(a) that workers at the workplace have suffered a significant number of compensable disabilities; or

(b) that a significant number of workers at the workplace are concerned about the rehabilitation programs and arrangements that apply at the workplace.

(2) An official of an employee association who has entered a workplace under subsection (1) may—

(a) inspect work carried out at the workplace and note the conditions under which work is carried out; and

(b) interview any person who works at the workplace about—

(i) the performance of work at the workplace; and

(ii) arrangements associated with rehabilitation programs at the workplace and the implementation of relevant rehabilitation and return to work plans.

(3) The powers conferred by subsections (1) and (2) may be exercised at a time when work is being carried out at the workplace.

(4) Before an official exercises powers under subsections (1) and (2), the official must give reasonable notice to the employer.

(5) For the purposes of subsection (4)—

(a) the notice must be in writing; and

(b) a period of 24 hours notice will be taken to be reasonable unless some other period is reasonable in the circumstances of the particular case.

(6) An official exercising a power under subsection (1) or (2) must not interrupt the performance of work at the workplace.

Maximum penalty: $3,000.

(7) In this section—

employee association means an association of employees registered under the Fair Work Act 1994 or the Workplace Relations Act 1996 of the Commonwealth.

We have just passed a clause which allows inspection of the place of employment by a rehabilitation adviser. We understand why that would be: it is so that the rehabilitation adviser can better assess what work would be appropriate, whether the injured worker can do it, how they might get back to their full pre-injury duties and so on. The amendment I now propose is a very important safeguard to ensure that efforts towards workplace safety are improved.

This amendment provides for the inspection of workplaces by officials of employee associations and, to put that in plain English, essentially I want unions to have the right to go to workplaces where there is a bad accident record. To put it in terms of the amendment, I believe that a union official should be able to go at any reasonable time (where there is at least one member of that trade union) to assess why at that workplace there are a significant number of compensable disabilities.

A worker by themselves may feel reluctant to blow the whistle in a workplace where there is a bad safety record, and we cannot necessarily rely on government workplace inspectors to go around and check every workplace. Even though I give credit to this government for increasing the number of workplace inspectors, they cannot be everywhere at once. Where there is a union member who asks their trade union to come and have a look at this workplace because of a bad safety record, then there is a vested interest and one would expect the trade union to be on the spot and appropriately making an assessment of the workplace.

If the official comes to the workplace under this amendment, I am suggesting that they should be able to inspect the work carried out at the workplace and note the conditions under which the work is carried out. I am suggesting that they should be able to interview people at the workplace about how work is done there and about how rehabilitation and return-to-work plans are implemented. The official must give reasonable notice to the employer. So, we are not talking about snap inspections and we are not talking about something that is going to be disruptive of the employer's production line—whether it be clerical, manufacturing or whatever.

I specify that the notice must be in writing and that it should be 24 hours' notice, unless there is some special reason for something else to be considered a reasonable period. I am actually putting in there a provision to say that a union official, if they go there under these circumstances to a dodgy workplace, must not interrupt the performance of work at the workplace, with a fine of $3,000. I am making it absolutely clear: I want the right of entry for a union official to check out a shonky workplace, but they cannot interfere with the work that is going on—that is absolutely not the intention.

We have here a very important safeguard to ensure that workplaces are being properly administered as far as workplace safety, rehabilitation and return to work plans are concerned. We cannot have government inspectors everywhere, and sometimes individual workers will not feel that they can speak up for themselves. It is appropriate, in those circumstances, for a worker who is concerned about either a number of injuries at the workplace, or where a number of workers are concerned about the safety record of the place, to call in a union to inspect. That is all it is: to be able to come and make an assessment.

From there the union may take a whole range of actions. The union may negotiate with the employer about how to improve the safety record; the union may talk to the employer about the workers' concerns, whether it is one worker, or a number of workers; and, of course, the union can do that without necessarily disclosing the identity of the worker—so it allows a safe outlet for a whistleblower where there are poor workplace safety practices. The union might facilitate taking the matter to SafeWork SA, or to the WorkCover ombudsman, depending on what the issues are, but what could be wrong with allowing the union to come in and just make an assessment of safety practices where there have been genuine concerns by the worker? They are not to interfere with the work, but they should be able to come in and make an assessment. That is all I am asking.

The Hon. M.J. WRIGHT: We do not see the need for the amendment at this stage.

Ms BEDFORD: I ask the member for Mitchell: what about other states that have right of entry for occupational health and safety?

Mr HANNA: I confess to the member for Florey that I have not looked at interstate provisions in relation to this. I am more familiar with historical provisions, when there were greater free rights of entry of unions for safety and industrial practices. In terms of industrial practices, that has been considerably tightened up and Howard's WorkChoices legislation has limited things even more. Rann's 'WorkChoices' in terms of this legislation is greatly restricting the rights of workers when it comes to their entitlements. The least we can do is have a watchdog out there in the form of the unions—at least there are some active unions who would fulfil this role—so that we can ensure that the highest standards of work safety are maintained.

Ms BEDFORD: Obviously you are not aware of any problems interstate, if you have not had a look at that, but, in light of the specific assurances that you have made in your amendment about not interfering with the work on the site, why would employers object, or have concerns about right of entry?

Mr HANNA: Some employers will just instinctively have a knee-jerk reaction against union officials coming into the workplace. We cannot do much about that, but I would have thought that if there is to be no interference with the work then there is no reasonable basis for an objection because it is simply someone coming to have a look. It is not really terribly different to a government workplace inspector coming to have a look at the site. It is only an assessment. That is all that this provision allows for.

Of course, if there are genuinely bad safety practices in the workplace, then, naturally, a shonky employer would not want anyone coming to blow the whistle on that and, if those work practices involved shortcuts which allow for greater profitability with the risk to workers' health concomitant with that, then the employer may well resist the entry of union officials—or anyone else, if they can possibly help it. They are exactly the circumstances in which this provision would be of benefit.

The committee divided on the new clause:

AYES (2)

Hanna, K. (teller)	Williams, M.R.

NOES (35)

Atkinson, M.J.	Bedford, F.E.	Bignell, L.W.
Breuer, L.R.	Caica, P.	Ciccarello, V.
Conlon, P.F.	Evans, I.F.	Foley, K.O.
Fox, C.C.	Geraghty, R.K.	Hill, J.D.
Kenyon, T.R.	Kerin, R.G.	Key, S.W.
Koutsantonis, T.	Lomax-Smith, J.D.	Maywald, K.A.
McEwen, R.J.	McFetridge, D.	O'Brien, M.F.
Penfold, E.M.	Pengilly, M.	Piccolo, T.

Pisoni, D.G.	Portolesi, G.	Rankine, J.M.
Rau, J.R.	Redmond, I.M.	Simmons, L.A.
Snelling, J.J.	Stevens, L.	Venning, I.H.
White, P.L.	Wright, M.J. (teller)	

Majority of 33 for the noes.

New clause thus negatived.

Clauses 66 to 68 passed.

New clauses 68A and 68B.

Mr HANNA: I move:

After line 37—Insert:

68A—Amendment of section 115—No contribution from workers

Section 115(2)—delete subsection (2)

68B—Insertion of sections 115A and 115B

After section 115 insert:

115A—Discrimination against workers—employers

(1) An employer must not—

(a) injure a worker in employment; or

(b) threaten, intimidate or coerce a worker; or

(c) discriminate against a worker in connection with employment

by reason of the fact that—

(d) the worker has made a claim under this act; or

(e) the employer is liable to pay any sum under this act to or in relation to the worker.

Maximum penalty: $2,000.

(2) If in proceedings under this section all the facts constituting the offence other than the reason for the defendant's action are proved, the onus of proving that the act of the employer was not actuated by the reason alleged in the charge lies on the defendant.

(3) If a person is convicted of an offence against this section, the court may, in addition to any penalty that it may impose, make an order requiring the person to compensate a worker for any monetary loss suffered by virtue of the contravention constituting the offence.

115B—Discrimination against workers—medical service providers

(1) If—

(a) a worker requests a person to provide, on a fee for service basis, a medical service to the worker on account of a compensable disability suffered by the worker; and

(b) the person is—

(i) reasonably competent to provide the service; and

(ii) reasonably capable of providing the service,

as part of a business, commercial or professional enterprise carried on by the person,

the person must not refuse to provide the medical service by reason of the fact that—

(c) the worker may be making, or has made, a claim for compensation under this act; or

(d) the worker is otherwise seeking the provision of the medical service in connection with the operation of this act.

Maximum penalty: $2,000.

(2) If in proceedings under this section all the facts constituting the offence other than the reason for the defendant's action are proved, the onus of proving that the act was not actuated by the reason alleged in the charge lies on the defendant.

This amendment inserts new clauses 68A and 68B. New clause 68B inserts proposed new sections 115A and 115B into the legislation. The two different aspects I am covering here have something in common; that is, the discrimination that takes place against injured workers. Proposed new section 115A provides that an employer must not discriminate against a worker in connection with employment or threaten them or cause them harm by reason of the fact that they have made a claim under the act. In other words, one is not allowed to discriminate against injured workers because of the fact they are injured workers; and the penalty that can be imposed is $2,000. That is the first part.

The second part also concerns discrimination against workers, but it is in a very different context. What has been brought to my attention is the reluctance, if not outright refusal, of some medical service providers to treat injured workers. I thought there was something like the Hippocratic oath which imposed some sort of professional obligation on medical service providers to deal with all who come to them for healing. However, that is not always the case. There are some specialists who just will not touch injured workers' cases. They do that for a variety of reasons. They are not, in turn, treated particularly well by claims agents in terms of the payment of their fees, and so on. They do not want to be dragged into writing a series of medical reports. They do not want to be dragged off as a witness to the tribunal—or the medical panel, if the bill passes.

For various reasons medical service providers are reluctant to take on injured workers. I put this amendment to make it unlawful for refusal of medical service by reason of the fact that the worker has made a claim for compensation or is otherwise seeking provision of the medical service in connection with the legislation. It may be that a worker is going to a particular medical practitioner for a medical report—for example, an assessment of their injuries—to be provided to the claims manager.

So, there are two parts to it. I do not think there should be discrimination against injured workers by virtue of the fact that they have been injured at work. Members might note the very first part of the amending clause, which deletes subsection (2) of the current section 115. That is consequential on the two parts to which I have already referred. I put that amendment so that workers can be free of discrimination in the workplace and also when seeking medical treatment.

The Hon. M.J. WRIGHT: The government opposes the amendment. The proposed new sections are unnecessary. Existing protections under both the Workers Rehabilitation and Compensation Act and the Equal Opportunity Act 1984 are sufficient.

Ms BEDFORD: I know that I am not an orphan in this: I have many people come to my office with stories about how they have been injured at work and are trying to get alternative employment. When it comes to the part of the interview where they are asked whether they have ever had a workers compensation claim and they answer truthfully, it then becomes difficult for them to secure employment. The minister is talking about the Equal Opportunity Act, but how can we strengthen his amendment so we can make sure that workers are not discriminated against because they have been injured in an unsafe workplace, an injury from which they have fully recovered?

Mr HANNA: I think the amendment will solve the problem. The minister referred to the Equal Opportunity Act, and I have concerns about that, because the Equal Opportunity Act refers to people with disabilities. The problem for injured workers is not necessarily that they have the disability. The medical specialist I am thinking of does not say, 'I am not going to treat you because you've got a bad back.' I am concerned about the medical service provider who says, 'You've injured your back at work, and I don't want to be drawn into that whole WorkCover miasma of reports and stuffing around with the claims agent and not being paid and being called to the tribunal and then it being postponed. I want to do without all of that headache. I am not going to deal with WorkCover patients.'

The problem then is a discrimination based on the fact that you have a worker who was injured at work and is, therefore, in the WorkCover system. The problem is not discrimination because of the person's disability per se. That is why I do not think the Equal Opportunity Act is an answer.

Ms BEDFORD: Following on from what the member just said, there is obviously a difficulty in finding doctors easily these days and, as the member said, some doctors are not very happy to

commit to patients who are involved in the WorkCover system. So, how will we be likely to obtain adequate, proper and good medical treatment for injured workers if there is this reluctance to pick up their cases?

Mr HANNA: The point is well made, and that is precisely why I bring forward the amendment. Once it gets out there in the medical profession that it is unlawful to refuse treatment to someone because they have been injured at work and they have a claim, a wider range of medical service providers will be available. They simply will not refuse if injured workers go to them for treatment.

New clauses negatived.

Clauses 69.

Mr HANNA: With respect to clause 69, I am intrigued about how the section 119 provision will be applied when self-insured employers seek to do a deal with workers to get them off the system. As we know, the government has moved to heavily restrict the granting of redemptions—that is, payouts to workers to effectively get them off the system. We also know that WorkCover has a poor track record of appropriate redemptions. We know that self-insured employers have a record of using redemptions to ensure that their schemes are well funded. I wonder what will happen when we see commercial pressures lead employers, in the interests of preserving their scheme, to offer payment to workers resulting in the discontinuance of payments to those workers.

I do not think that anyone will be stupid enough to write up the same sort of redemption agreement we see now, but we will see, for example, separation packages from employment and redundancy packages. We will see lump sum payments to the worker dressed up this way or that way and the worker happily leaving the employment. They will do it amicably and by agreement because it will look like a redemption, it will smell like a redemption, but they will say that it is not a redemption. I wonder whether that sort of behaviour will be policed at all and, if it is to be policed, will it be a breach of section 119 as amended?

The Hon. M.J. WRIGHT: I will ensure that WorkCover polices these provisions. Yes; it would be a breach of section 119.

Clause passed.

Clause 70 passed.

New clause 70A.

Mr HANNA: I move:

New clause, page 70, after line 10—Insert:

70A—Insertion of section 123

After section 122A insert:

123—Civil penalties

(1) Subject to this section, if the Corporation is satisfied that a person has committed an offence by contravening a civil penalty provision, the Corporation may seek to recover, by negotiation or by application to the District Court, an amount as a civil penalty in respect of the contravention.

(2) The recovery of a civil penalty under this section will be an alternative to criminal proceedings.

(3) The maximum amount that the Corporation may recover by negotiation as a civil penalty in respect of a contravention is $20 000.

(4) The Corporation may not make an application to the District Court under this section to recover an amount from a person as a civil penalty in respect of a contravention—

(a) unless the Corporation has served on the person a notice in the prescribed form advising the person that the person may elect to be prosecuted for the contravention and the person has been allowed not less than 21 days after service of the Corporation's notice to make such an election in accordance with the regulations; or

(b) if the person serves written notice on the Corporation, before the making of, such an application, that the person elects to be prosecuted for the contravention.

(5) If, on an application by the Corporation, the District Court is satisfied on the balance of probabilities that a person has contravened the civil penalty provision to which the application relates, the District Court may order the person to pay an amount as a civil penalty (but not exceeding $20 000).

(6) In determining the amount to be paid by a person as a civil penalty, the District Court must have regard to—

(a) the nature and extent of the contravention; and

(b) any detriment resulting from the contravention; and

(c) any financial saving or other benefit that the person stood to gain by committing the contravention; and

(d) whether the person has previously been found, in proceedings under this Act, to have engaged in any similar conduct; and

(e) any other matter it considers relevant.

(7) Proceedings for an order under this section that a person pay an amount as a civil penalty in relation to the contravention of a civil penalty provision, or for enforcement of such an order, are stayed if criminal proceedings are started or have already been started against the person for an offence constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.

(8) Proceedings referred to in subsection (7) may only be resumed if the criminal proceedings do not result in a formal finding of guilt being made against the person.

(9) Evidence of information given or evidence of the production of documents by a person is not admissible in criminal proceedings against the person if—

(a) the person gave the evidence or produced the documents in the course of negotiations or proceedings under this section for the recovery of an amount as a civil penalty in relation to a contravention of a civil penalty provision; and

(b) the conduct alleged to constitute the offence is substantially the same as the conduct that was alleged to constitute the contravention.

(10) However, subsection (9) does not apply to criminal proceedings in respect of the making of a false or misleading statement.

(11) Proceedings for an order under this section may be commenced at any time within 3 years after the date of the alleged contravention or, with the authorisation of the Attorney-General, at any later time within 5 years after the date of the alleged contravention.

(12) An apparently genuine document purporting to be under the hand of the Attorney-General and to authorise the commencement of proceedings for an order under this section will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

(13) The District Court may, in any proceedings under this section, make such orders in relation to the costs of the proceedings as it thinks just and reasonable.

(14) An amount recovered as a civil penalty under this section—

(a) may be paid into the Compensation Fund; or

(b) may be paid to a worker who has been adversely affected by the contravention of the relevant provision; or

(c) may be divided into 2 parts with 1 part being paid into the Compensation Fund and 1 part being paid to a worker who has been adversely affected by the contravention of the relevant provision, as determined by the Corporation in the case of an amount recovered by negotiation or as determined by the District Court in the case of an amount paid under an order of the court.

(15) In this section—

civil penalty provision means—

(a) section 58B, 58C, 115A, 115B or 119; or

(b) a provision of the Act prescribed by the regulations for the purposes of this definition.

One of the things that has undoubtedly been missing in the scheme has been the prosecution of misbehaviour under the act. In the case of section 58B, the minister has acknowledged that there has been a lack of enforcement in relation to employers' obligations.

The amendment is quite long, but the concept is quite simple: it is to provide civil penalties for a range of misbehaviour specified under the act. At the end of the provision, it is spelled out that, whether it be section 58B or avoiding the act (section 119), where there is misbehaviour there ought to be the ability for a civil penalty to be pursued, that is, not just criminal prosecution. We know that that has not happened in the past.

There is no reason to believe that resources or attitude will be different in the future in regard to enforcement, so I think it is appropriate that there be civil penalties that can be pursued, and that will be a more realistic threat to employers and will encourage better behaviour.

As this amendment is drafted, it says that the corporation may seek to recover an amount by civil penalty, and the amount is up to $20,000. This is another of those amendments that, when I look at it again, I believe the right to recover probably should be in the hands of the injured worker. So that, when an injured worker sees that there has been a failure to employ them under section 58B, then they should have the right to seek a civil penalty. One will see the prosecutions escalate very sharply and section 58B, the obligation to employ injured workers, will have some real teeth.

One could even extend this to employee associations acting on behalf of an injured worker so that unions, injured workers, or the corporation could seek this penalty of up to $20,000 for misbehaviour under the act. If the corporation has not been able to enforce these provisions in the past, if we do not have enough inspectors to prosecute people, then let it be done in the civil courts and, undoubtedly, the motivation of receiving the civil penalty will provoke more prosecutions, and that will simply mean that the obligations under the act are being enforced.

The Hon. M.J. WRIGHT: The government does not believe that a detailed civil penalties framework is necessary under the Workers Rehabilitation and Compensation Act. There are other appropriate penalty and levy arrangements in place, and for that reason we oppose it.

Ms BEDFORD: Is the member for Mitchell aware of how it works in other states? Are there similar provisions in other states?

Mr HANNA: I am fairly sure that there are not. The use of civil penalties is relatively limited across industrial and workers compensation law around the country, but the attraction of it as a means to greater enforcement is obvious. I have already referred to the fact that there is actually money in the hand of the person who successfully prosecutes where there has been misbehaviour under the legislation.

I do not think it will result in vexatious litigation because the usual costs orders would apply, and if someone sues and fails, they would be at risk of losing their legal costs. It is not something to be entered into lightly, but there is no doubt that the prospect of recovering up to $20,000 by civil penalty will mean that more people will be involved. I know that is not a full answer to the honourable member's question. I am not as familiar with interstate legislation as I might be, but I am confident that this will work.

Ms BEDFORD: Would it work in a similar fashion to where workers or unions could pursue civil penalties for award or maybe EBA breaches?

Mr HANNA: Yes, there are examples of civil penalties in industrial law as opposed to workers compensation law per se. It gives power to the workers and the unions not to make something out of nothing, but simply to see that legislation resolved by the parliament is actually enforced. We know that this has not happened with the WorkCover legislation in the past, and the minister has even acknowledged that in the course of debate.

Ms BEDFORD: Where would the fines be paid? Would they be paid directly by the employers to WorkCover?

Mr HANNA: Yes. The way in which the amendment is currently framed, it would be the WorkCover Corporation which would sue for the civil penalty. The application would be to the District Court. It would be an alternative to criminal proceedings, so it would knock out the possibility of double jeopardy or a criminal prosecution as well. If satisfied on the balance of probabilities that there was a contravention, then the wrongdoer (who would be an employer in this case) would be ordered by the District Court to pay the civil penalty.

There is a range of factors listed in subclause (6) which the court would have regard to: the nature and extent of the contravention; any detriment resulting from the contravention; any financial saving or other benefit that the person stood to gain by committing the contravention; whether there

is a history of offending; and any other relevant matter. One can see that there is the usual range of considerations in terms of imposing a penalty.

The detriment in the case of an employer failing to find appropriate employment for the worker (where it is, in fact, reasonably possible) can result in substantial detriment, because it could result in the complete loss of income maintenance for the injured worker, bearing in mind the section 35 provisions that were discussed earlier in the debate.

The amount of the penalty would then be paid by the wrongdoer to WorkCover. As I say, this provision probably could be improved by allowing injured workers themselves, who are directly affected by the wrongdoing, or employee associations—that is, trade unions—to pursue several penalties, as well. I think, upon reflection, that that would improve this provision. That is something that the Legislative Council might consider. If that was the case, I am absolutely positive you would see better enforcement of this legislation.

New clause negatived.

Clause 71.

Mr HANNA: I have a question for the minister about this code of claimants' rights. I really wonder what value it will have. It also seems to me somewhat ironic that the government is considering a code of claimants' rights when it has set up a medical panel which can make binding decisions determining workers' livelihoods without any appeal, without necessarily any input into the decision, and without any comment on the reasoning of the medical panel. You can have a code of claimants' rights as a statement of general principles but, when you give with one hand and grab the worker by the throat with the other hand, it does seem to be a bit empty.

The Hon. M.J. WRIGHT: It sets up a framework of how workers should be treated. It was proposed by Clayton. It is based on a successful New Zealand model, and I hope it would have the same results here in South Australia.

Clause passed.

Clause 72 passed.

Clause 73.

The CHAIR: Are you proceeding with amendment No. 88, member for Mitchell?

Mr HANNA: Amendment No. 88 was the subject of our earlier discussion on lump sum compensation. It is consequential to the earlier question so I will not be proceeding with it.

The Hon. M.J. WRIGHT: I move:

Page 71, line 33, after '43(4),'—Insert: (4a),

It is consequential on removing psychiatric disabilities.

Amendment carried.

Mr HANNA: One thing that has not been explored is the interrelationship of this schedule, this table of maims, with the AMA guidelines. The minister has suggested that whole body impairment will be worked out according to the American Medical Association guidelines. How will these individual items referring to body loss or function loss be translated into whole body impairment?

The Hon. M.J. WRIGHT: It is the minimum level of compensation for total loss if AMA has a lower result.

Clause as amended passed.

Schedule 1.

The Hon. M.J. WRIGHT: I move:

Page 75—Delete clause 8

This amendment is consequential on the removal of leave entitlements.

Amendment carried.

Mr HANNA: I move:

Page 75—

Line 13—Delete 'subclause (2)' and substitute: this clause

After line 24—Insert:

(2a) A worker—

(a) who suffered a compensable disability more than 2 years before the relevant day giving rise to a relevant liability that has not been the subject of a notification to the worker under section 42(4) of the principal act before the relevant day; and

(b) who has a permanent impairment on account of that compensable disability; and

(c) who makes application under this subclause before the expiration of one year from the relevant day; and

(d) who, after making the application, qualifies for an agreement under paragraphs (a) to (d) (inclusive) of section 42(2) of the principal act

is entitled to—

(e) a redemption calculated in accordance with the following formula:

AR=NYRxAExPI

where—

AR is the amount of the redemption

NYR is the number of whole years remaining until the worker's retirement age (as defined by section 35 of the principal act, as enacted by this act)

AE is the worker's notional weekly earnings at the time of redemption multiplied by 52

PI is the worker's degree of permanent impairment (expressed as a degree of impairment of the whole person), as determined under section 43A of the principal act, as enacted by this act; or

(f) a redemption calculated in accordance with the following formula:

AR=10xAE

where-

AR is the amount of the redemption

AE is the worker's notional weekly earnings at the time of redemption multiplied by 52

whichever is the lesser (any such redemption will result in subclauses (1) and (2) not applying in relation to the worker).

(2b) The corporation or a self-insured employer may delay proceeding with a redemption under subclause (1) with respect to a worker within the ambit of subclause (2a)(a) and (b) until—

(a) the period referred to in subclause (2a)(c) has expired (and the worker has not made an application under subclause (2a)); or

(b) the worker finishes a notice in writing to the corporation or the self-insured employer (as the case requires) declaring that the worker will not be making an application under subsection (2a)(c) (and the declaration will be irrevocable on the part of the worker).

I move these amendments together because they are part of a scheme in relation to redemptions. At the same time I will just briefly indicate that my amendment No. 91 is consequential so I will not be dealing with that. I think it is appropriate that amendments Nos 89 and 90 are tested together.

This comes back to the issue of redemptions. I have suggested that WorkCover has mismanaged redemptions over the years. I understand the point the minister has made drawing on the evidence of the Mountford report and other sources that redemptions can create a lump sum culture. They can encourage workers allegedly to stay on the scheme in order to be paid off. That may happen in some cases, but we have a scheme now which has been so messed around that we have a long tail.

The culture of the 3,000 or so people who have been on the scheme for more than two or three years is such that the vast majority, I believe, are never likely to get back to work. So, in a sense, we are better off doing something with that tail through redemptions, clearing it out, and

then starting again. If you want to have a system where there are not redemptions, that is fine. I can understand the reasoning, although I am not sure that it is the right thing to do. However, if you are going to impose that scheme, in a sense, you have to start again. There is no point in starting a no redemption scheme if you already have several thousand workers receiving income maintenance to retirement.

I think there ought to be a right for injured workers who have been injured for some time to take a lump sum—not an extravagant amount but enough to leave the scheme with dignity. By and large they have not been offered that up until now because of the redemption policies of WorkCover, as well, perhaps, as other reasons.

The scheme I propose is set out with a formula in amendment No. 90. Amendment No. 89 is really there as a consequential amendment to the main one and removes the part of the clause in the government bill that deals with redemption of liabilities. I suggest it should only apply to workers who have been on the scheme for more than two years prior to the relevant date (which is, I think, proclamation of the bill). So, we are not talking about workers who have been on the scheme for a month and then they can scam, they can wait until they get an opportunity to get a lump sum payment; we are talking about people for whom the prospect of either return to work or of a suitable redemption has, basically, already evaporated.

I also have the requirement that these people have a permanent impairment, and that there has been a calculation of their permanent impairment expressed as a degree of impairment of the whole person, as determined under section 43A of the principal act. We are talking about people whose injuries have settled, who have been on the scheme for more than two years, and who have a permanent impairment. I suggest that these people have, effectively, a year to take a package, they have a year to apply for redemption, and that redemption is at a fixed amount according to a formula.

I stress that up until now redemptions have been available by agreement only since the WorkCover legislation came into place in the 1980s. This provision for a short time only, for one year only, gives workers the right to take a redemption and get off the system. If the minister had been at the injured workers meeting held about a month ago at Enfield he would have met dozens of injured workers who would like nothing better than to get off the scheme and not be hassled by the claims agents.

The formula I have set out in the provision is quite conservative. For one thing, it has a cap of 10 years; secondly, it looks at the amount of time the worker has to go until retirement and multiplies that by their whole person impairment. Now, most injured workers—even if they have been on the scheme for more than a couple of years—might have 10 or 20 per cent, perhaps 25 per cent, whole person impairment, so I am taking the number of years to retirement (which might be anything between 10 and 40, I suppose) and multiplying it by that percentage.

In a lot of cases what you would end up with is two years', four years', five years' payout, and that is capped at a maximum of 10 years. However, for that, the scheme is benefiting all of the income maintenance up to retirement age—whether it be 10, 20 or 40 years. It is allowing an exit from the scheme with dignity. A lot of workers would want it, and it would improve the unfunded liability statistics of the scheme overnight. I dare say that if this was put through it would even put the scheme into the black.

The Hon. M.J. WRIGHT: The government does not support these amendments. We have put in place what we think are appropriate transitional arrangements for redemptions and, for that reason, we do not support the amendments.

The committee divided on the amendments:

AYES (2)

Hanna, K. (teller)	Williams, M.R.

NOES (35)

Atkinson, M.J.	Bedford, F.E.	Bignell, L.W.
Breuer, L.R.	Caica, P.	Ciccarello, V.
Conlon, P.F.	Evans, I.F.	Foley, K.O.
Fox, C.C.	Geraghty, R.K.	Hill, J.D.
Kenyon, T.R.	Kerin, R.G.	Key, S.W.
Koutsantonis, T.	Lomax-Smith, J.D.	Maywald, K.A.

McEwen, R.J.	McFetridge, D.	O'Brien, M.F.
Penfold, E.M.	Pengilly, M.	Piccolo, T.
Pisoni, D.G.	Portolesi, G.	Rankine, J.M.
Rau, J.R.	Redmond, I.M.	Simmons, L.A.
Snelling, J.J.	Stevens, L.	Venning, I.H.
White, P.L.	Wright, M.J. (teller)	

Majority of 33 for the noes.

Amendments thus negatived.

The Hon. M.J. WRIGHT: I move:

Page 76—Delete clause 17

This amendment is consequential on dispute resolution.

Amendment carried.

Ms BEDFORD: Will the minister give examples of previous occasions when parliament has passed retrospective legislation like this which takes away people's rights when, as in this case, they are injured or, in other cases, perhaps when the event which gave them their rights had happened?

The Hon. M.J. WRIGHT: I do not have that information with me, but I can provide it to the member later.

Ms BEDFORD: Will the minister advise whether consideration has been given to changing the provisions so that partially incapacitated workers who were injured before this bill was introduced at least will not be cut off until WorkCover has made a decision, as opposed to their pay automatically ceasing, with the worker then having to apply for their payments to be reinstated?

The Hon. M.J. WRIGHT: Consideration has been given to many things to get us to the introduction of this bill.

Mr HANNA: I want to ask the minister a question about retrospectivity. When the Premier gave a ministerial statement to the house about the Clayton report, he seemed to be suggesting in fairly clear terms that this legislation will not be retrospective, but clause 4 of schedule 1, in relation to weekly payments, clearly is retrospective, is it not?

The Hon. M.J. WRIGHT: From memory, the Premier was talking about step-downs, and what the member is talking about is the work capacity reviews.

Mr HANNA: One of the implications I am questioning in relation to the transition to new sections 35 to 35C inclusive is the situation of a worker who has already been receiving income maintenance for 2½ years by the time the act is proclaimed. Will there be any sort of automatic cessation of the worker's income maintenance, or will they continue until they are put off?

The Hon. M.J. WRIGHT: No; the legislation requires 13 weeks' notice.

Ms BEDFORD: Will the minister let us know whether actuarial advice has been received on the financial impact of perhaps making these changes prospective rather than retrospective?

The Hon. M.J. WRIGHT: Not specifically; but the application of these clauses is fundamental to achieving the outcomes that have been defined by the terms of reference.

The Hon. S.W. KEY: I just want to be clear on the transitional arrangements, minister. Do the provisions set out in schedule 1 mean that, if someone has been on WorkCover and receiving weekly payments for the past six months, they will at the time of this legislation being proclaimed be subject to the provisions of this bill when it becomes an act?

The Hon. M.J. WRIGHT: Once they have reached 2½ years of receiving income maintenance.

The Hon. S.W. KEY: Further to that, I would also like to clarify the fate of workers currently going through the process of the redemptions if their case has not come up for hearing, or if they are in dispute in any circumstances. What will be the fate of their weekly payments and perhaps a lump sum payment if they are currently going through the process after the act has been proclaimed?

The Hon. M.J. WRIGHT: The advice I have received is that, where redemption negotiations have commenced for workers on the scheme for more than three years, those negotiations can continue.

Schedule as amended passed.

Title passed.

Bill reported with amendment.

The Hon. M.J. WRIGHT (Lee—Minister for Industrial Relations, Minister for Finance, Minister for Government Enterprises, Minister for Recreation, Sport and Racing) (23:02): I move:

That this bill be now read a third time.

Mr HANNA (Mitchell) (23:03): It appears that I will be the only speaker in relation to this final vote on the bill. It really is an historic occasion, because the Labor Party is transformed by this whole experience. There is the internal agony suffered by those with a conscience who came into this place to improve the lot of working people and disadvantaged people. Many have had to swallow their conscience and their pride to vote for this and for the many measures which take money out of the pockets of working people and their families.

In one way, it is the slaughtering of the last of Labor's sacred cows. After this, there is nothing which really defines the Labor Party as distinct from a centrist party like the Democrats in the US, or perhaps, say, the wet faction of the Liberal party. The Party becomes perhaps a slightly softer, fairer version of a party that is ultimately there for big business. There is no doubt that the motivation behind this legislation is to please big business. Of course, the unfunded liability is a concern but, as numerous speakers have pointed out, there are other ways of dealing with that problem other than cutting workers' benefits.

I have called it an amputation approach. If you have a patient lying in hospital with a sore leg, there are a lot of conservative ways to treat it before you cut off the leg. There is no denying the logic of the WorkCover Board's proposals, the Clayton report's proposals and the government's proposals: if someone has a sore leg and you cut it off, then it is no longer a sore leg. There is no issue that the measures that the Labor government is bringing in will reduce unfunded liability.

It has been explicit from the outset—and Clayton said something about this also—that the goal is to reduce employer levies possibly by half to three-quarters of 1 per cent. That is possible simply by reallocating the cost of work injury from employers to injured workers, from those who can afford to pay the insurance premiums to those who will have to do without their income.

It is a betrayal of working families by the Labor Party. It is a betrayal of the hard-working police officers, nurses, teachers, miners, and manufacturing and building workers who are out there day after day making South Australia a better place in which to live. It is also a betrayal of the trade unions. We have not heard the last of the internal haemorrhaging that this transformation of the Labor Party causes.

We can talk about the events of the immediate future: the passage of this bill in the upper house; the Labor Party State Council; and the Labor Party Convention, which they will have to have sooner or later to debate this issue, and we know will happen at such convention. There will be a lot of agony, a lot of recrimination, a lot of dissent and a lot of pointing the bone at the Labor leadership. Frankly, I do not think the Labor leadership will care less. They are so arrogant, so firm, so confident in their position that they will not only disregard the pain that this legislation causes to working families, they will also disregard the anger of many members within the Labor Party, even members within the Labor caucus, because they are so sure that they have the numbers to stay in place, and they are so sure that they will retain the confidence of the community because of the positive image that Rann is able to perpetuate in the media.

In the long run, the pain caused by WorkCover cuts here will have an immediate impact on just a few thousand people. If you include the injured workers currently on benefits, and their families, you could say, 'It's just a few thousand people.' But, every day there are more people injured, and everyone, when they turn their mind to it, wants to see a decent level of protection for people who are injured at work.

Certainly, there will be people out there in the community, including the trade unions, who will raise awareness of just what Rann is doing with this legislation. I am sure that the Labor backbenchers have made their calculations. They know that if they cross the floor they are risking their career. I went through that difficult stage of thinking, 'How long can I put up with this rubbish?

How long can I put up with the bullying? How long can I put up with being told what I can and can't say in this place?' I know that is what a number of Labor backbenchers are going through at the moment.

At the end of the day, though, what they are trying to salvage may be taken from their grasp any way, because it will not be me but it will be someone, who has a leaflet, going out into the electorate of every marginal Labor member. It will have a list of the provisions where people have voted to cut income maintenance for workers, to cut the level of lump sums they receive, to cut their pay if they challenge a dispute, to have decisions made by a medical panel without representation or without the member present and to have no appeal to a legal decision made by a bunch of doctors. All of these things will be spelled out.

They will be in a leaflet and they will have the name of the Labor Party member on the leaflet. I do not know whether it will come from the Greens or the Liberals or an Independent Labor candidate, but it will say, 'Your Labor MP voted for these things. Do not vote Labor this time around.' And if you think that there will not be a backlash, I think that you are kidding yourself. I say that rhetorically to the half a dozen or more Labor backbenchers who are at real risk of losing their seat at the next election.

The main points are really that workers face the loss of income maintenance completely after 2½ years: that is what I have described as the cornerstone of the bill. There are many other nasty elements to the bill. Tonight we have talked about the medical panels, which operate something like the Star Chamber which was a harsh, unaccountable means of interrogating and punishing people in England a few hundred years ago before we developed our modern principles of natural justice. That will be how medical questions and related issues are resolved under the current system. Workers will be starved out of the dispute tribunal because a very large proportion of them will have their payments discontinued if they even seek to fight a claim.

There will just be so many workers, hundreds every year, who will face the wretched decision of either accepting some sort of cut or an unwanted determination from a claims manager or risking the loss of their income entirely in order to challenge the decision. That is not justice. There were various things I sought to do to ameliorate the harsh effects of the bill—and I have called it cruel because it means the loss of workers' livelihoods.

I sought to have a union right of entry to make sure that workplaces are safer. The Labor leadership dictated that that should be rejected. I sought the right for workers to sue negligent employers, but Rann and the Labor leadership dictated that that should not be the case. This point is important because, over and over again, Premier Rann and others have said that this will be fair and generous legislation and, during the course of debate, I specifically quoted Premier Rann's radio comments claiming that this would be 'the most fair and generous legislation in the country'.

That can very easily be demonstrated to be an absolute lie. The fact is that the other states, if they are examined, have the common law right for injured workers to sue negligent employers albeit with harsh restrictions, but at least a substantial amount is paid out in other states, including Victoria, to other workers because employers had been negligent and caused nasty injuries. The shocking thing in a way—notwithstanding the difficulty of crossing the floor on such an issue—is that so many people in this room have had a lot to do with injured workers.

There are so many people here who have been members of unions—still are members of trade unions—or who are closely linked, in one way or another, to injured workers. Even among the Labor leadership we have a couple of people with union experience who must have come across the hardship of work injury. I am on record as saying that the only four people in the Labor Party who really want this legislation through are Premier Rann, Deputy Premier Foley and ministers Atkinson and Conlon. We all know that, in fact, they have been given enough power, through the feudal system of the Labor Party, to dictate their way to all the Labor Party members, notwithstanding they know that just about every other honest, ordinary, sincere branch member of the ALP is dead against what they are doing.

I suppose you could say it is courageous, but only in the sense that bank robbers are courageous when they go in and point a gun at someone and take money from them. The fact is that minister Conlon had a lot to do with I think it was the firefighters' union, as did minister Caica. They have met people who have been badly burned and had their backs twisted in dangerous conditions when they have been crawling through ceilings and that sort of thing. They would know the sort of suffering that people can go through as a result of work injury, and yet Conlon has been at the forefront of heading off party revolt on this issue.

Going along the front bench you see people like the minister, Michael Wright, himself. He knows full well the role played by the Hon. Jack Wright in setting up this legislation. He was out of the parliament by the time that it was introduced. I am not going to play on this point—it would be unfair to do so—but with the minister's experience in the AWU, he would well know the experience of injured workers and how hard it is when someone's income is cut off as a result of bastardry by an employer, or a claims agent.

You go down the front bench and look at someone like minister Weatherill: he fought for many years as a lawyer in the tribunal, in the courts, for the rights of injured workers, and he would have met hundreds, if not thousands, over the years who would have been in a serious plight as a result of nasty decisions by claims managers—stupid, incompetent decisions by employers and claims managers. This legislation is basically going to give the stamp of approval to harsh decisions by claims managers and careless safety practices by employers.

Then you have people such as the member for Torrens who knows very well through her own experience and through her husband that workers can suffer seriously as a result of being injured at work. Even the Deputy Speaker, the member for Reynell, knows from her history as a union advocate for white collar workers that clerical workers are not immune from serious injury at work. She would know very well the hardship that falls upon people who have been injured at work.

Going around the room, there are other members who also know very well what it is like to have your income cut off and to be sweating about where the next mortgage payment is going to come from. Yet these bastards are willing to transfer the cost of work injuries to the injured workers—

The Hon. K.O. FOLEY: I have a point of order. Mr Speaker, we as a government have very patiently listened to the member for Mitchell, but to refer to us as bastards is both unparliamentary and a reflection on us, and I ask him to withdraw.

The SPEAKER: I uphold the point of order. It is unparliamentary.

Mr HANNA: I will withdraw the reference to 'bastards'. I will just say that the Labor leadership full well knows that this is a nasty piece of legislation, and it will have a very cruel impact on thousands of South Australian families—those who are currently on WorkCover and those who are going to be.

From time to time we hear stories in the newspaper about bludgers—people who are on WorkCover who we might see on the current affairs show on TV. There is the odd 1 per cent of workers who might be trying to get away with a bit too much, but the vast majority of police officers, nurses, teachers, builders and miners who go on WorkCover face serious injuries. I have given a couple of examples of work injuries, and one that affected me particularly was the story of the butcher's apprentice who was instructed to use an unguarded machine. After having his hand sliced off, I wonder how he is ever going to get employment again. After 2½ years his income can be taken away from him and he will be left with the dole and possibly the disability pension.

It is that sort of case which just about makes one weep, because the intention of the legislation 20-odd years ago was to see that such people, if they could not get employment, even if they tried, would be looked after with income maintenance until retirement age. That in itself was brought in in place of the common law, which fully compensated people for their injuries both in terms of the pain and suffering and also loss of income.

The Hon. K.O. Foley interjecting:

So, to bring things to a conclusion, I note in passing that the Deputy Premier actually laughs while I am giving this speech. It is hard to convey, as one reads *Hansard*, the atmosphere of the parliament as one gives a speech such as this at 20 past 11 at night, but to have the mockery that goes with it demonstrates where these people are coming from. It is unnecessary legislation. We could have fixed WorkCover without this. With better management and proper use of redemptions this all could have been avoided. Sadly, it is a combination of the Labor Party and the Liberal Party that is sticking the knives into some of the most vulnerable people in our community through this legislation.

Time expired.

Members interjecting:

The SPEAKER: Order! The member for Giles has the call.

Ms BREUER (Giles) (23:23): Mr Speaker, as you can tell, it has been a very difficult week in parliament for members of the Labor Party. I do not believe there is any question about the need for a bill. There is no question about the problems WorkCover is having, and it is no secret that it has been very difficult for many members of the Labor Party. It is certainly no secret that it has caused some division among us in the Labor Party, and it is no secret that it has caused a division with the unions.

I came into this place to represent my constituents in the seat of Giles. I came in on the support of many workers, particularly in Whyalla, and many of them will be affected in one way or another by this bill, but I also came in as a member of the Labor Party, and I would not be here without the party. Consequently, I signed an agreement to abide by caucus decisions, and I will continue to do so.

I respect my peers, the leadership of the party in this place and this government. I trust their judgment on this bill. I want to pay tribute to the minister in his role in carrying this bill this week. It must have been a very difficult time for him. I trust the leadership's judgment on this bill. I hope this bill fulfils its promises and that WorkCover will provide for the needs of those people who have the misfortune to be injured at work. Therefore, I support the bill.

Ms BEDFORD (Florey) (23:25): This bill brings about changes and all parties, I am sure, believe that change is necessary in order to create a better WorkCover system. The changes in much of the bill, which copies the Victorian legislation, have at least one major difference. Of course, in Victoria, as in every other state, injured workers can have action for serious employer negligence. A number of other things in the bill concern me, and every other member, I am sure, has canvassed most of them during the week. I know it is late and members do not want hear all that again, so in the interests of everyone having an earlier night I will not go over them again.

There are particular considerations around how the bill will have psychological effects on the people who are on WorkCover already. All MPs have encountered injured workers who have had problems, not only received through their injury but also caused by their participation in the WorkCover scheme. This is the thing that concerns me most about the bill.

We all are concerned about workers having safe workplaces, and we all are concerned that workers injured through no fault of their own or on their part have the opportunity to heal and return to the workforce and continue to lead the sort of life they enjoyed before their accident. This bill strikes at the very reason all members are in this place. It reminds me of the very first case to come to my office shortly after I was elected. A woman had lost her husband due to a work accident. While he may have died, she did say that he could have been lucky to have survived with really bad injuries. It is a life sentence for her, and a life sentence for anyone who is injured so badly that they will never return to work.

There are many other cases in my electorate about which I could talk where, through negligence on the part of the scheme, these people have never returned to work. I want to assure everyone who comes to my office—those who are already injured or those who may be injured in the future—that they will be looked after in their healing and rehabilitation process by a system that is fair and well managed, so that it and they will have a future.

The Hon. M.J. WRIGHT (Lee—Minister for Industrial Relations, Minister for Finance, Minister for Government Enterprises, Minister for Recreation, Sport and Racing) (23:28): I thank all members for their contribution. This is a complex and very emotive piece of legislation. I do appreciate the contributions that have been made on both sides of the house. I also thank all the stakeholders with whom I have met. I acknowledge the contributions of both the Deputy Premier and also minister Conlon at meetings we held with the trade union movement. Generally speaking, this legislation does not have the support of trade unions. We understand where they are coming from. We appreciate what they had to say to us.

At the end of the day, government is about making the tough decisions. This has been a particularly tough decision for a Labor government to make. We are not doing something here that we want to do but, rather, we are doing something we need to do. One has to look at the stark reality of the unfunded liability. Just last week WorkCover announced another rise in the unfunded liability. As at 31 December 2007, the unfunded liability was $911 million. The average levy rate is 3 per cent. The costs are too high. We are not good at getting people back to work. If one looks at those basic barometers, South Australia, sadly and disappointingly, is not doing well. We need to go back to the 1990s to look at a point in time when we started to do poorly in relation to return to work. As time has gone by, ultimately the actuarial results have caught up with us. We just cannot sustain an unfunded liability of $911 million.

So, what did we do? As members would be aware, recommendations were made to the government, which came to me as minister, by the WorkCover Board back in November 2006. They were far-reaching—more far-reaching than this bill—and, of course, we then had to decide whether we would back those recommendations by the WorkCover Board or whether we would reject them. We ultimately decided to get two experts, Clayton and Walsh, to undertake an independent review for us to consider the recommendations that were made by the WorkCover Board and, obviously, to apply themselves to the terms of reference (which I do not need to go back over tonight). The report that was given to us largely formed the basis of the bill that, on behalf of the government, I brought before the parliament. Following a further round of consultation, some government amendments were also filed.

There are some measures within this package that we understand are blunt instruments—whether they be step-downs or the work capacity reviews—but a key objective of the South Australian WorkCover scheme is to get injured workers back to work at an affordable cost, and we simply have not been doing that well for quite some time. It probably goes back as far as at least 1995, or thereabouts.

I am advised that our reforms will help to achieve the objective of getting workers back to work, and that is what we have to be about. There is a range of measures (and I will not go through them all), which include simplification of the calculation of average weekly earnings by looking back over the past 12 months. I have mentioned that step-downs for payments to injured workers are to be 100 per cent for the first 13 weeks, 90 per cent for the next 13 weeks and 80 per cent thereafter. Maximum compensation for non-economic loss is increased to $400,000, up from $230,983. Similarly, the lump sum payable on the compensable death of a worker will be significantly increased to $400,000.

Entitlement to counselling services will be introduced for family members of workers who die of a workplace injury. Totally and permanently incapacitated workers will continue to be supported until retirement. New provisional liability provisions will allow for the fast tracking of rehabilitation, supported medical treatment and other benefits for injured workers. Accredited rehabilitation and return-to-work coordinators will be mandatory for all employers with 30 or more employees. There will be a return-to-work inspectorate, expert medical panels, a WorkCover ombudsman, a code of workers' rights, the establishment of a $15 million return to work fund—and I can go on and on, but I will not, because I know it is late.

Can I say to all members that this has been a difficult decision for the government. It is a particularly difficult decision for a Labor government to make. However, we had to make a hard decision because, as I said, when one looks at the unfunded liability, the average levy rate and the poor return-to-work rate, sadly, South Australia is way behind what is happening in other states around Australia, and the time to act is now.

The house divided on the third reading:

AYES (34)

Bedford, F.E.	Bignell, L.W.	Breuer, L.R.
Caica, P.	Ciccarello, V.	Conlon, P.F.
Evans, I.F.	Foley, K.O.	Fox, C.C.
Geraghty, R.K.	Hill, J.D.	Kenyon, T.R.
Kerin, R.G.	Key, S.W.	Koutsantonis, T.
Lomax-Smith, J.D.	Maywald, K.A.	McEwen, R.J.
McFetridge, D.	O'Brien, M.F.	Penfold, E.M.
Pengilly, M.	Piccolo, T.	Pisoni, D.G.
Portolesi, G.	Rankine, J.M.	Rau, J.R.
Redmond, I.M.	Simmons, L.A.	Stevens, L.
Thompson, M.G.	Venning, I.H.	White, P.L.
Wright, M.J. (teller)		

NOES (2)

Hanna, K. (teller)	Williams, M.R.

Majority of 32 for the ayes.

Third reading thus carried.

At 23:38 the house adjourned until Thursday 10 April 2008 at 10:30.